TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 377.

GEORGE A. AND J. V. CLARKE, APPELLANTS,

vs.

JAMES B. JOHNSTON AND ADAM NORRIE, EXECUTORS OF JAMES BOORMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 8, 1872.

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a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the following pages, numbered from to inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George A. Clarke et al., against James B. Johnston et al., exec'r's, &c., as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the second circuit, this day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the said United States the ninety-sixth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. int. rev. stamp canceled.]

1 [SEAL.] The President of the United States of America to James B. Johnston and Adam Norrie, greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of June, A. D. 1869, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by G. A. Clarke & al., and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 26th day of April, in the year one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

KENNETH G. WHITE, *Clerk.*

MAX. GOEPP, *Compl'ts' Sol'r.*

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of June, 1869, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

I hereby depute Robinson to execute the within writ.

R. MURRAY, *U. S. Marshal.*

AP'L 26, 69.

2 Personally served on Adam Norrie; other not found.

R. MURRAY, *U. S. Marshal.*

Ap'l 29, '69.

Filed May 1, 1869.

REC. 377—1

3 In the circuit court of the United States for the southern district of New York.

G. A. CLAKKE
vs.
BOORMAN'S EXECUTORS. } In equity.

To the honorable the judges of the circuit court of the United States, for the southern district of New York, sitting in equity:

Humbly complaining, show unto your honors, George Augustus Clarke, an infant under twenty-one, to wit, of the age of eighteen years, or thereabouts, and your oratrix, Jeanet Virginia Clarke, an infant under the age of twenty one, to wit, of fifteen years, or thereabouts, citizens of the State of Maryland, by Reuben Middleton, their guardian and next friend, who is also a citizen of the State of Maryland, bring this their bill against James B. Johnston and Adam Norrie, who are citizens of the State of New York, and who are here sued as the executors of the last will and testament of James Boorman, who was, in his life-time, a citizen of the State of New York.

And thereupon your orator and oratrix complain and say that they are the only legitimate children and heirs of the late George Augustus D. Clarke, who died on October 14, 1855; that the said George Augustus D. Clarke was the only issue of the marriage of the late John X. Clarke with Jeanet Smith, and was born in August or September, 1815; that James R. Smith, the father of said Jeanet Smith Clarke, died in the city of New York, in 1817, leaving a large estate, and a will and codicil, by which the said George Augustus D. Clarke, his grandson, and the father of your orator and oratrix, was instituted the residuary
4 and ultimate beneficiary of one-fourth part of his estate; that said will and codicil were duly probated, and Matthew St. Clair Clarke and James Boorman were appointed two of his executors; that said Matthew St. Clair Clarke and James Boorman qualified and administered on said estate; that said executors never had an inventory of said estate made out and filed; that they never rendered an account of their administration to the competent authority; that the said Matthew St Clair Clarke died in May, 1852, utterly insolvent, and that by the manifold breaches of trust and frauds of said Matthew St. Clair Clarke and James Boorman, your orator and oratrix, and their aforesaid father, George Augustus D. Clarke, were entirely deprived of the legacy left to them by the said will and codicil of the said James R. Smith, and that your orator and oratrix now bring this bill to claim from the legal representatives of said James Boorman, the last surviving executor, an account of the administration of the estate of said James R. Smith, the delivery of the legacy accruing to them under the said will, and if that should have become impracticable, by the illegal acts of said executors, an adequate compensation for the loss and injury caused to them by the fraudulent acts of said executors.

And your orator and oratrix show that the artfully conceived and long persevered in course of said fraudulent executors, to conceal every thing that might disclose their manner of disposing of the estate of said James R. Smith, renders it very difficult to ascertain how it was dealt with. Still, through the assistance of friends, they have become informed of numerous transactions connected with it, which they now beg leave to state, praying permission to amend their statements if they should hereafter ascertain them to be erroneous.

And your orator and oratrix further show that the said James R.

Citation 861 800

Smith, their great grandfather, was for many years a merchant in the city of New York; that he acquired a large fortune, and died in the city of New York, in the early part of June, eighteen hundred and seventeen; that he left a will executed on the twenty-third of January, eighteen hundred and seventeen, by which he appointed Andrew Foster, John Thomson, James Boorman, his wife, Hannah Smith, and Matthew Saint Clair Clarke, his executors, and authorized his executors in their discretion to sell in fee-simple or otherwise, the whole or any part of his estate, real or personal, and directed that, out of the proceeds of his estate, all his just debts, funeral charges and expenses should be paid, and that the residue of his estate, unless the same or any part thereof should be otherwise disposed of by a codicil or codicils, should be distributed according to the laws of the State of New York, in the same manner as if he had died intestate.

Your orator and oratrix show that, on the thirtieth of May, eighteen hundred and seventeen, the said James R. Smith made a codicil to his said will, which he divided into twelve parts, the provisions whereof material in this case are as follows, viz:

First. That he ratified and confirmed his said will in all respects, except so far as any part thereof might or should be revoked or altered by his said codicil, and that in addition to the powers granted to his executors, he authorized them to lease his estate or any part thereof, except such as should otherwise be disposed of.

Second. He devised and bequeathed to his wife, Hannah, all his real estate in the township of Newark, in the State of New Jersey, with all the rents, issues, and profits thereof during her natural life, with full power and authority in her, by her last will and testament, to devise the same to all or any of their joint children, and with the further power and authority in her, by and with the consent of the executors, to sell any and every part thereof, except the homestead, and to vest the proceeds thereof in funds for her further support during her natural life, having the same authority over said funds to distribute them by her last will and testament, as she had over the estate from which they might be created. And he further directed his executors to invest as soon after his decease as conveniently could be done, the sum of twenty-five thousand dollars ($25,000) in bonds secured by mortgage, or real estate, or in stock of the United States, etc., and to alter and change the same into any other securities of like description as often as they might deem meet and proper, and to pay the interest, produce, and profits of such investment, or so much thereof as she shall judge necessary, to his said wife, for her maintenance and support during her natural life; and until such investment could conveniently be made, he directed his said executors to pay to his said wife out of his estate, the annual sum of fifteen hundred dollars ($1,500) in half-yearly payments. And he further gave and devised to his said wife, and to her heirs and assigns forever, ten thousand dollars ($10,000) part of the aforesaid sum of twenty-five thousand dollars ($25,000) to dispose of at her death as she might think proper, which provision should be in lieu and bar of all dower, or right of dower, in, to, or out of the testator's estate.

Your orator and oratrix show that the subsequent parts of said codicil, from No. 3 to No. 11, inclusive, made a number of minor bequests to relatives of said testator, or for charitable purposes, and that the last and twelfth division of said codicil is the one under which the rights of your orator and oratrix arise, and is in the following words, viz:

"Twelfth. All the rest, residue, and remainder of my estate, of every

kind and nature whatsoever and wheresoever situate, I give, devise and bequeath unto my said executors in trust, that the same shall be equally divided to and amongst my four children, share and share alike, and to their respective heirs. My will further is that my son James and my daughter Elizabeth shall each have the sum of fifteen hundred dollars set apart by my said executors for their support and education until they shall arrive at the age of twenty-one, and if that sum shall not be found sufficient, my executors shall take such further sum from their respective shares of my estate as shall be necessary. And I do hereby give the tuition, care and guardianship of my said son James and my daughter Elizabeth to my said wife. My will further is that my son James shall not come to the full possession and enjoyment of his portion of my estate until he shall arrive at the age of twenty-five years, nor shall he have the power to pawn, pledge, mortgage or dispose of the same, or any part thereof, before the expiration of that time, but shall be entitled to receive the income arising from his portion between the years of twenty-one and twenty-five. I further direct that my daughters Jeanet, Hannah, and Elizabeth, if she should arrive at the age of twenty-one years, have the privilege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of my estate, herein devised to them, in such manner as they may think proper, and over which, when so appropriated they shall have absolute control; and the remaining two-thirds of the portions or shares of my daughters, shall be held separate and distinct and not liable to the control, debts, or engagements of either of their husbands which they now have, or may hereafter have, as well those who are married as she who may hereafter marry, giving, however, to the husbands of either or all of them, in case the wife should die first, either with or without issue, the income of said reserved part of my estate, as long as he shall live, arising from his wife's portion, and after his death, then to the child or children of my said daughter so dying, and if either of my daughters shall die without lawful issue, or having issue which shall not attain the age of twenty-one years and without issue, then the share or
7 portion of my said daughter after the death of her husband, or if there be no husband living at her death, shall go and be divided among my other children, share and share alike, and to their issue. In case of the death of either of them, share and share alike, such issue to take the portion that would have belonged to his, her, or their father or mother."

And your orator and oratrix further show that the said James R. Smith, having died very soon after the execution of the said codicil, the aforesaid will of January 23d, 1817, and of the aforesaid codicil of May 30, 1817, the same were duly probated on June 11, 1817, before Sylvanus Miller, surrogate of the county of New York, and on the same day Hannah Smith, the widow of the said James R. Smith, John Thomson and James Boorman, qualified as executors, and on the 18th of February, 1818, letters testamentary were delivered to the said Matthew St. Clair Clarke.

Your orator and oratrix further show that Andrew Foster, who, also, was appointed one of the executors of the will of said James R. Smith, of January 23, 1817, refused to act as such and never was qualified.

Your orator and oratrix show that the said James R. Smith left four children, viz:

1. Jeanet, the wife of the Rev. John X. Clarke.
2. Hannah Rhea, the wife of the aforesaid Matthew St. Clair Clark.
3. Elizabeth, who afterwards became the wife of Joseph Duncan, and
4. James R. C. Smith.

That, at the time of the death of said James R. Smith, his said daughter Jeanet, the wife of said John X. Clarke, had by her said husband a son named George Augustus Clarke, who was born in White street, New York City, in August or September, 1815, and was the only child the said Jeanet ever had. That the name of the said George Augustus Clarke, was afterwards, viz, by an act of the Legislature of the State of Maryland, passed on January 11th, 1843, changed to George Augustus Duncan Clarke; that the said George Augustus Duncan intermarried on the fifth of June, 1844, at Cumberland, in Maryland, with Mary Virginia Kehler, and that he died on the 14th October, 1855, intestate, leaving issue of his marriage with the said M. Virginia Kehler, three children, to wit: Nanny T. Clarke, who was born at Cumberland,
8 in the State of Maryland, on the 18th of April, 1846; your orator, George Augustus Clarke, who was born on Sept. 27th, 1851, at Cumberland; and your orator, Jeanet V. Clarke, who was born on January 20, 1854; and that the said Nanny T. Clarke, having died at Denver City, in Colorado Territory, on the 5th of January, 1868, intestate, your orator and oratrix became her heirs, and they have succeeded to all the rights of their said late father, George Augustus D. Clarke, in the estate of his said grandfather James R. Smith.

Your orator, George Augustus Clarke, shows that he was originally called and baptized Talbert Clarke, but that by an act of the general assembly of the State of Maryland of February 11, 1858, his name was changed to George Augustus Clarke.

And your orator and oratrix further show that the said Hannah, their great grandmother and the widow and executrix of said James R. Smith, intermarried on the 29th of November, 1819, with Dr. John R. B. Rodgers, from which time her participation in the management of the estate of said James R. Smith, ceased; that John Thomson, another of the executors of said James R. Smith, died about 1828, and that thereafter the two surviving executors, Matthew St. Clair Clarke and James Boorman, had the entire management thereof.

Your orator and oratrix further show that, although the four executors of the said James R. Smith who qualified, swore when receiving letters-testamentary, that they would make and exhibit a true and perfect inventory of the estate of said Smith, and render a true account thereof when thereunto required, they never had an inventory of the same made, either in the State of New York or in the State of New Jersey, where valuable real property belonging to said estate was situated, and that the said will and codicil of said James R. Smith never were probated in the State of New Jersey.

Your orator and oratrix further show that, from the premises, it appears that the twelfth clause of the aforesaid codicil of said James R. Smith bequeathed the rest and remainder of his estate, after paying debts and legacies, to his children, share and share alike, each taking one-fourth thereof, to be divided in kind between them, the son to take his fourth in absolute ownership, and each of the daughters to
9 take the absolute ownership of one-third of her fourth, and a life estate in the remaining two-thirds of her fourth, the same to descend, as the testator's reserved estate, to the children of his said daughters, whereby the said George Augustus D. Clarke, and your orator and oratrix succeeding him, became the ultimate benificiaries of two thirds of one-fourth of the estate of said James R. Smith.

Your orator and oratrix charge, that the obvious design of the said Matthew St. Clair Clarke, with the concurrence and connivance of the said James Boorman, they being the two surviving and managing ex

ecutors, was to deprive the grandchildren of said James R. Smith, the ultimate beneficiaries under his will, of all benefit from said bequest, and to enable the said daughters to dispose of the whole residuary estate of said James R. Smith, as if the same had been bequeathed to them in fee; which design was carried out to such an extent that neither the said George Augustus Clarke nor your orator and oratrix, who are his children and heirs, have ever derived the least benefit from said bequest, although the estate of said J. R. Smith was very large.

Your orator and oratrix further charge that, in pursuance of said design, nearly all matters relating to said estate, which ought to have been made public, were concealed; the only documents relative to the existence of the estate of the said James R. Smith, that are to be found in the offices of any surrogate, is the aforesaid probate of the will and codicil of said James R, Smith and the letters testamentary of said executors, one of whom, the said Matthew St. Clair Clarke, though a non-resident, never gave bond.

Your orator and oratrix further show that, in consequence of said course of said executors, they could obtain but partial information of the manner in which the said estate was disposed of and parted with by the said executors; of which partial information your orator and oratrix beg leave to submit a summary statement.

And thereupon your orator and oratrix show that, inasmuch as the said James R. Smith was a merchant and spoke in his aforesaid will of debts, there may have been outstanding obligations against him at the time of his death, of which, however, your orator and oratrix know nothing; that they have been informed that, some time before his death, the said James R. Smith made out a schedule of his personal and real property; and they call upon the defendants to produce the same, if it is to be found among the papers of the said late James Boorman; that they have reason to suppose that the personal property was large, but have no knowledge whatever of the manner in which it was disposed of, it not being on record; but that, as regards the real estate of said James R. Smith, your orator and oratrix have ascertained that the said James R. Smith had extensive possessions in the State of New York, both in the city of New York, and in other parts of the State, and also, possessions in the State of New Jersey; and that the executors of said James R. Smith sold real property of the said estate, situate in the city of New York, among others as follows:

To William Wallace, Feb'y, 1818	$11,000
Peter P. Goelch, Feb'y, 1818	24,500
James Thompson, Feb'y, 1818	44,250
" " March	100
William Colgate, Aug., 1823	20,000
Betheil Bunker, Aug., 1823	2,000
William A. Coit, Nov., 1825	100
	$61,950

Your orator and oratrix further show that they are informed and believe that the said executors also, about the same period, sold lands in various countries in the State of New York, but have been unable to obtain correct information concerning the same, and pray for an account of said sales.

Your orator and oratrix further show that, on the twelfth of July,

1821, the aforesaid Hannah, first the wife of said James R. Smith, and then the wife of John R. B. Rodgers, then residing at Newark, in the State of New Jersey, made a last will and testament, by which, after making some minor legacies, she bequeathed the bulk of her estate to the four children issued from her marriage with said James R. Smith. as she was directed to do by the second article of the aforesaid codicil of the said James R. Smith, and nominated and appointed Robert of Robertson, merchant, and Peter W. Radcliff, counsellor-at-law, both S, the city of New York, her executors; that she died on , 1825; that the said will was probated in the city of New York, but not in the State of New Jersey, where the testatrix resided, and that no inventory of said estate was ever made and filed, nor an account rendered of the administration thereof, either in the States of New York or New Jersey.

11 Your orator and oratrix further show that, when, after the death of the aforesaid executor, John Thomson, the said Matthew St. Clair Clarke and James Boorman had the sole management of the estate of the said James R. Smith, they employed Peter W. Radcliff as their legal adviser in the settlement of said estete, and Robert Dyson as the agent of said estate; that the said Peter W. Radcliff was the brother-in-law of said James Boorman, and on terms of the greatest intimacy with him and the said Matthew St. Clair Clarke; that the said Robert Dyson was a nephew and legatee of *of* the said James R. Smith, and probably also connected by marriage with the said Boorman, and that the said P. W. Radcliff and Robert Dyson efficiently co-operated with the said Matthew St. Clair Clarke and James Boorman, to deprive the father of your orator and oratrix of the benefits intended for him by the said will of said James R. Smith.

Your orator and oratrix further show that the reverend John X. Clarke, their grandfather died at Greencastle, Pennnsylvania, in September, 1824; that his widow, the aforesaid Jeanet Clarke, then went to reside with the aforesaid Matthew St. Clair Clarke, her brother-in law, in Washington City, and lived in his house and famiiy until her death on Sept. 5, 1847; that, as your orator and oratrix are credibly informed, the said Jeanet Clarke was a very weak-minded person, incapable of understanding or attending to business, and entirely under the control of the said Matthew St. Clair Clarke.

Your orator and oratrix further show that, in 1829, the said James C. R. Smith, the son of the said James R. Smith, had attained the age of twenty-five years which made the division of the said estate, and the setting aside of the said James C. R. Smith's fourth thereof necessary; that thereupon the said Matthew St. Clair Clarke procured from the said Jeanet Clarke a power of attorney, dated the 25th of September, 1829, authorizing him to represent her in the settlement and division of the estate of her father and mother with the other heirs, and to except for her such division and allotment of said estate as he might elect, and to buy the same for her if necessary; and further directing that two-thirds of her share of her said father's estate should remain in the hands of the said Matthew St. Clair Clarke, and as the same might be sold from time to time, the interest whereof to be paid to her when

12 demanded; and also to settle for her with the executors of James R. Smith, one of whom was the said Matthew St. Clair himself, and to settle with the executor of her mother, P. W. Radcliff, who was at the same time the attorney of the said Matthew St. Clair Clarke and of the estate of James R. Smith.

And the said James C. R. Smith being then, as aforesaid, entitled to

claim his one-fourth part of said estate under the twelfth article of the aforesaid codicil of said James R. Smith, the said four children of said James R. Smith parted, divided and valued said estate in four equal parts in kind, as by reference to articles of agreement of October 21, 1829, would appear, and the said executors and the said three daughters of said James R. Smith conveyed to the said James C. R. Smith, by deed of November 15, 1829, certain extensive real estate in the city and State of New York, according to the aforesaid valuation, the said James Boorman and Robert Dyson being two of the persons making the appraisement which was the basis of said division. And it is further stated in said deed, which was signed by the aforesaid executors and the said Matthew St. Clair Clarke and Anna Rhea, his wife, Joseph Duncan and his wife, and by said Jeanet Clarke, represented by Matthew St. Clair Clarke, that the debts of said estate had all been paid.

And your orator and oratrix further show that, they find in the public records, deeds, in which it is stated that, on settlement of the accounts between the estate of said Hannah Rodgers, (formerly Hannah Smith,) and the estate of said James R. Smith, the estate of said James R. Smith was indebted to the estate of said Hannah Rodgers in the sum of fourteen thousand six hundred and fifty-two dollars and twenty-two cents; and as by the last will and testament each of her four children, the issue of her marriage with the said James R Smith, was entitled to one-fourth part of said sum, to wit, three thousand six hundred and sixty-three $\frac{5}{100}$ dollars, it was agreed that each of the said four heirs should take lots of ground in the city of New York in payment of said debt, according to fair valuation. "And, whereas by an agreement in writing by all the heirs of said James R. Smith and said Hannah Rodgers, dated the 21st of October, 1829, such valuation was made by James Boorman, Thomas Suffern and Robert Dyson, esq's, of all the lots
13 of ground belonging to the estate of James R. Smith: thereupon, on the 15th of November, 1829, the said executors, in conjunction with such of the heirs as were not grantees, conveyed to each of the aforesaid heirs lots of the estate of James R. Smith, situated in the city of New York, in payment of the aforesaid sum of $3,663.05 the sale to satisfy the claim of the said Hannah Rhea Clarke, the wife of said Matthew St. Clair Clarke, being made to said Robert Dyson, who immediately, on the same day, reconveyed the same property to the said Matthew St. Clair Clarke.

And your orator and oratrix aver that the above-mentioned settlement between the estates of James R. Smith and Hannah Rodgers, is invalid, the same persons representing both parties, and it being, moreover, apparent from the will of said James R. Smith, and other circumstances, that his estate could not be indebted to the estate of said Hannah Rodgers; and they further charge that said sales were only made in order to vest an apparent title in fee in the four children of the said James R. Smith, to the prejudice of the grandchildren of said James R. Smith, the ultimate beneficiaries under the will of said James R. Smith.

And your orator and oratrix further show that, whereas, by the twelfth article of the aforesaid codicil of said James R. Smith, it was directed that the residuary estate of said Smith should be divided into four parts and taken in equal shares by the aforesaid four children of said James R. Smith, and their children; that the said James C. R. Smith, the son of said James R. Smith, should take his fourth in absolute ownership, and that the three daughters of said James R. Smith should each take one-third of her fourth in absolute ownership, and have only a life-estate in the remaining two-thirds. Deeds were executed

at New York on the 15th of November, 1829, by and between the said Matthew St. Clair Clarke and James Boorman, as surviving executors of said James R. Smith; and the said Anna R. Smith, the wife of said Matthew St. Clair Clarke; the said Elizabeth C. Smith, the wife of Joseph Duncan; and the said Jeanet Smith, the widow of John X. Clarke; and James C. R. Smith, the four children of said James R. Smith, in several of which deeds it is averred that the aforesaid thirds of the one-fourth part of the estate accruing to each of the three daughters were now proposed to be set aside: "that the debts of the estate were all paid, and the residue of the estate consisted principally in real
14 estate; that the said daughters were then desirous to appropriate their respective one-third parts of said estate, and the said executors were willing that they should do so; that it was 'universally admitted by all the said heirs and devisees that a sale of said estate to convert it into money would be very injurious to all concerned;' that by agreement among said heirs the whole of the said real estate had been parted, divided, and valued in four distinct and equal parts; that the part of the real estate lying out of the city of New York, and divided as the one-third of the one-fourth part devised, and belonging to said daughter, Jeanet, in her own right, was estimated at six thousand nine hundred and twenty-nine dollars and fifteen cents, and that the part of said real estate lying in the city of New York, divided as one-third of the one-fourth part thereof to the said Jeanet Clarke, was estimated at three thousand eight hundred and fifty-seven dollars and thirty-one cents, after deducting the monies coming to said Jeanet on account of the estate of Mrs. Hannah Rodgers, late Hannah Smith, deceased."

And that the third of the one-fourth part allotted to said Anna Rhea, the wife of said Matthew St. Clair Clarke, was conveyed on the same day to Robert Dyson in fee, no reference being had to the aforesaid directions of the codicil of the said James R. Smith, or the said division, the deed purporting to convey absolutely all the right and title which the said James R. Smith, deceased, had in his life-time in said property; that the said conveyance was signed by the said Matthew St. Clair Clarke, as executor, and by him and his wife as heirs, and by him as attorney in fact of Jeanet Clarke, and was in reality a sale by himself to himself, the said Dyson being an interposed person, and having reconveyed the same property on the same day nominally for the same sum which in the conveyance to him he was declared to have paid.

And your orator and oratrix further show, after the above-mentioned transactions, the rest and remainder of the said estate in the hands of said executors, was what the testator in the twelfth article of his codicil, called his "reserved estate," in which his three daughters had a life-estate, but which was really bequeathed in fee to the children of the children of said testator, and which was devised and bequeathed to said executors in trust for said children and grandchildren.

And your orator and oratrix further show that, with a view of
15 carrying out the long harbored design to deprive the grandchildren of the said testator, James R. Smith, of all benefit of his will, as ultimate beneficiaries, the said James Boorman combined and confederated with said Matthew St. Clair Clarke, his co-executor; with said Joseph Duncan, the husband of said Elizabeth C. Smith; with said Peter W. Radcliff, the brother-in-law of said James Boorman, and his and the said Matthew St. Clair Clarke's legal adviser in the management of the estate of said James R. Smith; and with one Robert Dyson; and on the 26th of December, 1829, the said James Boorman and Matthew St. Clair Clarke, surviving executors of the last will and testa-

ment of said James R. Smith; James C. R. Smith and Julia M., his wife, Jeanet Clarke, widow, of Greencastle, Pennsylvania; Matthew St. Clair Clarke and Anne R., his wife, of Washington City; and Joseph Duncan and Elizabeth C., his wife, of the State of Illinois executed a conveyance in fee to the said Robert Dyson, of the city of New York, of all the extensive lands and lots of ground lying in the State and city of New York, then supposed to be the whole remainder of the estate of the said James R. Smith; that said conveyance was stated to be made in consideration of the sum of sixty-four thousand seven hundred and ten dollars and fifty-nine cents, ($64,710.59,) nominally paid by the said Robert Dyson into the hands of the said Matthew St. Clair Clarke, said deed purporting to convey to the said Robert Dyson all the right and title the testator, James R. Smith, had in said property.

Your orator and oratrix show that said deed was executed in Washington City, on the 26th of December, 1829, and there acknowledged on the same day by the said Matthew St. Clair Clarke, executor of James R. Smith; by Anna R. Clarke, his wife; by Joseph Duncan and Elizabeth C., his wife; that it was acknowledged by the said James C. R. Smith and Julia M., his wife, in the city of New York, on the 20th of May, 1830; that it was acknowledged by the said James Boorman, in the city of New York, on the 9th of July, 1830, and that it was recorded in New York on the 28th of December, 1830, at the request of the said Peter W. Radcliff.

Your orator and oratrix further show that all the aforesaid property was immediately reconveyed in fee by the said Robert Dyson, one part thereof, to the said Matthew St. Clair Clarke and Anna R., his wife, nominally for twenty-one thousand six hundred and fourteen dollars
16 and fifty-six cents; another part thereof to the said Joseph Duncan and Elizabeth C., his wife, nominally for twenty-two thousand five hundred and twenty-two dollars and ninety-eight cents; and the third part thereof to the said Jeanet Clarke, nominally for the sum of twenty one thousand five hundred and seventy-three dollars and thirteen cents, the said Robert Dyson purporting to transfer to his said grantees all the right, title, and interest he had in said property, and professing to have received from his said grantees the above mentioned purchase-money in cash.

Your orator and oratrix further show that the three aforesaid deeds of the said Robert Dyson to the three daughters of the said James R. Smith, were all dated of the 26th of December, 1829, the date of the aforesaid conveyance to the said Robert Dyson, and were all three acknowledged by him at New York, on the 9th of July, 1830, and were all three recorded in the office of the register of deeds at New York, the 28th day of December, 1830, at the request of the said Peter W. Radcliff.

Your orator and oratrix further show that all the said four deeds of the 26th of December, 1829, to wit: the conveyance by the executors and heirs to the said Robert Dyson, and the three deeds by the said Robert Dyson to the three daughters of the said James R. Smith, were fraudulent contrivances to vest in the said daughters an apparant title in fee to the property in which they had only a life estate, and thus to enable them to dispose of said property to uninformed and innocent purchasers to the prejudice of the remainder, limited to the children of the said daughters of said James R. Smith; that it is obvious that no money was ever paid in consideration of the conveyances contained in any of said four deeds; that the said deeds of the said Robert Dyson conveyed to the said three daughters, the portions of the estate of said James R. Smith, allotted to each of them by the arrangement

and agreement for a division of the estate, mentioned in the heretofore described deeds of the 15th of November, 1829, and that the fraud of which your orator and oratrix complain, consists not in said division, but in the form in which it was made, which enabled the daughters of said James R. Smith to deceive purchasers concerning the nature of the *little* they had in said property, and thus by selling the property to innocent purchasers, to deprive their own children of all possibility
17 of recovering the same in kind; whereas the trust which the said executors had taken upon themselves under said will of James R. Smith, made it incumbent upon them to preserve the said property in kind for the ultimate beneficiaries, and to lease it, until such division, and if they choose no longer to execute said trust, to have other trustees appointed to carry out said trust, and to protect the parties legally entitled to said property.

Your orator and oratrix further show that they have no information enabling them to contest or dispute the fairness of the agreement for a division of the estate of the 21st of October, 1829, and that it appears evident that the aforesaid conveyance by the said Robert Dyson to the said Jeanet Clarke, their grandmother, embraced the property which had been al'otted to her in said division. And as the aforesaid George Augustus Clarke survived his said father, John X. Clarke, and his said mother, the said Jeanet Clarke, and had attained the age of twenty-one years before her death, he became, as soon as he attained the age of twenty-one years, the owner in fee of said property, but as yet without any right to claim the possession thereof, and after her death entitled to the exclusive use and control thereof, which right has now devolved upon your orator and oratrix, as his sole and legitimate heirs. And, as the aforesaid sale by the executors and children of said James R. Smith to said Robert Dyson, of December 26, 1829, was a fraud upon their rights *an and* absolute nullity, and they could undoubtedly recover in kind the portion of said property allot'ed to the said Jeanet Clarke by said division agreed upon on October 21, 1829, and carried into informal effect by the said sale of said Robert Dyson to said Jeanet Clarke, if said property was still in the possession of the said Robert Dyson, they have the right of claiming from the surviving executor the delivery of said legacy, or the full value of said real estate at the present time, if by reason of sales to innocent purchasers made possible only in consequence of the said fraudulent sale to said Robert Dyson, and the breach of trust of said executors, the delivery in kind of said legacy has become impossible.

And your orator and oratrix aver that the real property situated in the State and in the city of New York, to which they are entitled is the property described in the aforesaid conveyance of said Robert Dyson to the said Jeanet Clarke, which deed is of the following tenor, viz:
18 "This indenture, made this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, between Robert Dyson, of the city and State of New York, of the first part, and Jeanet Clarke, widow, Green Castle, Pennsylvania, of the second part, witnesseth: That for and in consideration of the sum of twenty-one thousand, five hundred and seventy-three dollars thirteen cents, lawful money, in hand paid by Jeanet Clarke, party of the second part, the receipt whereof the said Robert Dyson, party of the first part, doth hereby acknowledge before the ensealing and delivery of these presents; the said Robert Dyson, party of the first part, has granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and by these presents does grant, bargain, and sell, remise, release, enfeoff, and

confirm to the said second party, Jeanet Clarke, her heirs and assigns, all and singular the hereinafter-described lots and parcels of ground, situate, lying, and being in the State of New York and city of New York, more particularly described as follows, to wit: In the northeast section of township No. one, Watkins and Flint's purchase, Tioga County, the following subdivisions, as laid off and surveyed by Darius Bentley, on the tenth day of January, 1821, to wit: Lots No. three, containing 68 acres $\frac{50}{100}$; No. seven, containing 99 acres $\frac{12}{100}$; No. eighteen, containing 100 acres $\frac{48}{100}$; No. twenty-seven, containing 99 acres $\frac{9}{100}$; and west half of No. twenty-eight, containing 47 acres $\frac{39}{100}$, sold together to William Fisk by articles of agreement; No. thirty-one, containing 99 acres $\frac{20}{100}$; No. forty-two, containing 102 acres $\frac{8}{100}$; No. forty-four, containing 94 acres $\frac{78}{100}$; No. fifty, containing 119 acres $\frac{18}{100}$; and No. fifty-four, containing 117 acres $\frac{95}{100}$. In Randolph Township, Broome County, subdivision No. three, in great lot No. 15; subdivisions Nos. four and six, in great lot No. 17; subdivisions Nos. three, seven, and eight, in great lot No. 22; subdivisions Nos. one and three, in great lot No. 27; all and every of said subdivisions containing eighty acres. In great lot No. 17, Fayette, now Easton, subdivision No. two, being the southwest one-fourth part, contracted for to Richard Mudge and Jesse Skinner, containing 160 acres. In Tioga County, township No. six, of Watkins and Flint's purchaae, north part of southwest section, subdivision No. thirty-two, containing 297 acres; and in the northwest section of township No. nine, as above, subdivisions No. two, south half thereof, containing 101 acres; and No. four, west half thereof, containing 101 acres. Also, in township No. six, Clinton County, subdivision No. one, being the northeast one-fourth part of great lot No. six, containing 156 acres 2 rods and seventeen perches; subdivision No. three being the southeast one-fourth part of great lot fifty-seven, containing 179 acres 3 rods 16 perches; subdivision No. two, being the northwest one-fourth part of great lot No. sixty-six, containing 212 acres 2 rods 28 perches; subdivision No. one, being the northeast one-fourth part of great lot No. sixty-nine, containing 159 acres 1 rod 3 perches; and
19 subdivision No. two, being the northwest one-fourth part of great lot No. eighty-four, containing 168 acres and 17½ perches. In township No. four, Clinton County, subdivision No. two, being the northwest one-fourth part of great lot No. thirteen, containing 160 acres. In township No. seven, Franklin County, subdivision No. three, of remainder of great lot No. twelve, containing 82 acres 1 rod; subdivision No. three, of remainder of great lot No. 45, being the southeast one-fourth part, containing 41 acres 3 rods 24 perches; a subdivision of great lot No. forty-seven, being 50 acres, contracted for to Rufus Morse; subdivision No. 2, being the northeast, being the one-fourth part of the remainder of great lot No. fifty, containing 82 acres 1 rod; subdivision No. 1, being the south half of the Chamberlain lot in great lot No. fifty-nine, containing 140 acres; subdivision No. three, being the southeast one-fourth part of great lot No. seventy-five, containing 195 acres one rod and two perches; and subdivision No. five, of great lot No. ninety, containing one hundred acres. In the township of Erin, Tioga County, in great lot No. one hundred and forty-nine, subdivision No. six, containing one hundred and one acres and one perch; subdivision No. nineteen, containing one hundred and sixteen acres and thirty-five perches, contracted for to Martin and Stephen Derry. In great lot No. seventy-six, Fabius, now Truxton, Courtland County, subdivision No. eight, contracted for to Job Whitemarsh, containing 56 acres. In Ulster County, Hardenburgh patent, 5th allotment, subdivision No. three, of great lot

No. six, the subdivison No. two hundred and thirty-seven, containing 140 acres 2 rods; and No. two hundred and sixty-seven, containing 136 acres. In the township of Chemung, Tioga County, great lot No. 137, subdivision No. seven, containing 117 acres 2 rods 16 perches; and the west one-half of subdivision No. eight, contracted for to George Cooper, containing 58 acres 3 rods and 8 perches; also subdivision No. fifteen, containing 62 acres 3 rods and twenty-nine perches; in last aforesaid county, in great lots Nos. 109, 110, and 113, as subdivided lot No. six, contracted for to James Boylan, containing 98 acres; and lot No. 17, contracted for to Brown, containing 109 acres 1 rod and 34 perches; and in great lot No. 173, in said county, subdivision No. eleven, containing 102 acres; subdivision No. fifteen, containing 120 acres; and subdivision No. eighteen, containing 98 acres. In the city of New York, on Stanton street, lots Nos. one, four, and seven, as subdivided into nine equal lots, between Forsyth and Eldridge streets, and which lots are formed out of six lots known and designated on the plan of said city as lot No. 1479, the corner of Forsyth and Stanton; No. 1478 on Forsyth; No. 1477 on same; No. 1455, the corner of Stanton and Eldridge; and Nos. 1456 and 1457 on Eldridge street. In the great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing part of 17th, 18th, and 19th streets, as subdivided, lot No. seven on 17th street; Nos. fifty, fifty one, seventy, seventy-one, on 18th street; Nos. eighty-one, eighty-two, ninety-five, ninety-six, one hundred and one, and one hundred and two, on 19th street; and fractional lots Nos. thirty-one and thirty-four, on 18th street; also lots Nos. two and six in the subdivision of great lots Nos. 28 and 32, called the Stewart lots, situate between the Seventh and Eighth avenues, on Twenty-sixth and Twenty-seventh streets, said great lots being subdivided into eight lots, each being about twenty-four feet ten inches in front and rear, and about two hundred and forty feet deep. All of which said several tracts of land and lots of ground to be holden by their several descriptions, be their contents more or less. To have and to hold the said tracts of land and lots of ground, with the appurtenances and improvements thereon, to her, the said Jeanet Clarke, party of the second part, her heirs and assigns forever, to the only proper use, benefit, and behoof of the said Jeanet Clarke, her heirs and assigns forever, hereby vesting in her, the said Jeanet Clarke, her heirs and assigns forever, all the right, title, and interest of the said Robert Dyson, party of the first part, in and to the aforesaid described tracts of land and lots of ground.

"In witness whereof the said Robert Dyson, party grantor, has hereunto set his hand and affixed his seal, the day and year first herein written.

"ROBERT DYSON. [L. S.]

"Signed, sealed, and delivered in presence of *us*—
ROBERT C. LUDLOW.

"CITY AND COUNTY OF NEW YORK, *ss:*

"On the ninth day of July, in the year of our Lord one thousand eight hundred and thirty, before me came Robert Dyson, known to me to be the individual described in, and who executed the above conveyance, & who acknowledged that he executed the same.

"ROBERT C. LUDLOW,
"*Commissioner of Deeds.*

"Recorded the preceding at the request of P. W. Radcliff, this 28th of December, 1830, at 50 min. past 1 p. m.

"JAMESON COX, *Register.*

"OFFICE OF THE REGISTER OF DEEDS, &C.,

"*City and County of New York, ss:*

"I have compared the annexed copy with an instrument recorded in this office on the 28th day of December, 1830, at 1 o'clock, and 50 min. p. m., in liber No. 267 of conveyances, page 335, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

"Dated this 26th day of July, A. D. 1862.

"JOHN KEYSER, *Register.*"

21 Your orator and oratrix further show that they are advised and believe, that the party most instrumental in depriving them and their aforesaid father of their rights in the estate of said James R. Smith, was the said Matthew St. Clair Clarke; that said Matthew St. Clair Clarke, took the said Jeanet Clarke, after the death of her husband, who was his brother, in September, 1824, to his house in Washington City, when she contrived to live until her death on the 5th of September, 1847; that the said Jeanet Clarke was a sickly, weak-minded person, absolutely under the control of the said Matthew St. Clair Clarke, upon whom she depended for her comfort and means of livelihood, and who was a man of great ability and most persuasive manners, and who could get her to sign any paper he presented to her; that, besides the before-mentioned power of attorney of Sep. 25, 1829, he obtained from her an instrument dated May 13, 1830, which recites that "for divers good and valuable considerations, and also to re-imburse to himself the sum of $2, 241.06, she sold to him all the property coming to her from the estate of her late father, James R. Smith, or her late mother, Hannah Rodgers, all which estate will fully appear by the settlement of the heirs of said James R. Smith and Hannah Rodgers made in October last, (1829,) in trust, nevertheless, for the following intents and purposes, viz: to sell said property either in his own name as trustee or in her name, to pay to himself the said sum of $2,241.06 either in money or by part of the real estate in the city of New York, conveyed to her as part of her mother's estate, or out of the one-third part of her father's estate conveyed to her by his executors, taking the same at the valuation made before the division of said estate, and also that the proceeds of the whole of the remainder should be appropriated as she would direct during her life-time, and that in case of her death, he, said Matthew St. Clair Clarke, should provide for the maintenance and education of her son George Augustus Clarke; that if said George Augustus Clark should die before attaining the age of twenty-one years, and without lawful issue living at his death, then the whole of what she received from her father's estate as the one-third of the one-fourth thereof, and also what she obtained by the division of her mother's estate, should be held in trust by the said Matthew for the use and benefit of her sister Anna Rhea Clarke, his wife; and further, that, in the contingency that the said George

22 Augustus should die before the age of twenty-one, without leaving lawful issue, so much of the two-thirds of her inheritance from the estate of her said father, as designated in said division, and conveyed to her by deed from Robert Dyson, as remained undisposed of, should be disposed of by said Matthew, according to the tenor of the will of her father, said James R. Smith."

And your orator and oratrix further show that such was the ascendency and influence of the said Matthew St. Clair Clarke over the said Jeanet Clarke, that she signed and published a last will and testament on the 15th of February, 1847, which was probated after her death in Alleghany County, in the State of Maryland, and which was entirely in the handwriting of said Matthew St. Clair Clarke, and by which he was appointed her sole executor and trustee, to dispose of and administer on her estate, giving a life-estate therein to her said son, George Augustus Clarke, and the remainder in fee to his children; which trust the said Matthew St. Clair Clarke violated, as he had violated the trust created by the will of said James R. Smith, the said George Augustus D. Clark, the father of your orator and oratrix, and they themselves never having received the least benefit under either of said wills, said Matthew St. Clair Clarke never having filed an inventory of the estate of said Jeanet Clarke or rendered an account of his administration thereof, although he acted as executor and appropriated the proceeds thereof.

Your orator and oratrix show that, after the execution of the aforesaid deed of May 13, 1830, by said Jeanet Clark to said Matthew St. Clair Clarke, which is partly a power of attorney and partly a deed of trust, the said Jeanet Clarke, but as they are informed and believe, principally the said Matthew St. Clair Clarke, under said power, disposed of most, and probably of all the property allotted to said Jeanet Clarke by the aforesaid division agreed on in October, 1829; that they have discovered some conveyances so executed by them, but that as they were left destitute by the frauds of said executors, they have not the means of discovering with certainty, what has become of the whole property embraced in the said deed of Robert Dyson to said Jeanet Clarke, which is truly the property of your orator and oratrix; and that, whereas the said James Boorman has accepted the executorship of the said James R. Smith, he or his legal representatives are bound to render an account of said estate.

23 Your orator and oratrix further show that the said James Boorman departed this life on the 24th of January, 1866, leaving a last will and testament, which was probated in the surrogate's office, in the city of New York, on the 17th of February, 1866, and by which he appointed James B. Johnston and Adam Norrie, of the city of New York, and citizens of the State of New York, his executors, who qualified and still are in office, and administer on the large estate of the said James Boorman.

And your orator and oratrix further show that, although they do not know, and have discovered no evidence, that the said James Boorman had pecuniarily been benefitted by the frauds, through which they have been deprived of their rights, still his estate is responsible to them for the mismanagement of the estate to their prejudice, he and the said Matthew St. Clair Clarke being the surviving executors when the frauds now complained of were committed, and said executors being responsible, jointly and severally, and because the said frauds, and the ruin of your orator and oratrix would have been impossible if the said Boorman had been faithful to his trust.

Your orator and oratrix further show that, in his life-time the said James Boorman sometimes alleged and pretended that the will and testament of said James R. Smith authorized his executors to appoint an agent, and that they, under that authorization, had appointed, as such general agent, Peter W. Radcliff, the brother-in-law of said Boorman, and legal adviser of both said surviving executors. But your orator and oratrix show that the said executors were responsible for the selec-

tion and the acts of said agent, and for the consequences thereof if he violated the directions of said will; and at other times the said James Boorman declared that the said testator, James R. Smith, had directed by the last article of his aforesaid codicil "that his executors, their respective heirs, executors, and administrators, should be charged and chargeable only, every one of them, for and with his or her own receipts and payments, acts and wilful defaults, and not otherwise; and should not be charged or chargeable with or for any sum or sums of money other than should actually and respectively come to his or her hands by virtue of said will, nor with or for any loss or damages which may happen in or about the execution of all or any of the trusts by said will in them reposed without his or their respective wilful default."

But your orator and oratrix aver that said article of said codi-
24 cil did not secure to said Boorman absolute impunity for anything his co-executor, Matthew St. Clair Clarke, might do and what he could do only by and with the connivance of said Boorman; that it is evident that your orator and oratrix, and their deceased father, would have received the share of property bequeathed to them by the said James R. Smith, but for the wilful default of said James Boorman in conniving at the fraudulent and simulated sale of the remainder of said estate to said Robert Dyson, which enabled the said Jeanet Clarke, through her agent, the said Matthew St. Clair Clarke, to hold herself out to the world as the owner in fee of the property in which her son had a residuary interest, and to dispose of the same in such a manner that neither her said son or your orator and oratrix have ever derived the least advantage from the said bequest of the said James R. Smith.

And your orator and oratrix further show that, at other times, and particularly when giving this testimony in the case of Conover vs. Hoffman, reported in 1 Bosworth, p. 214, and 15 Abbott, Pr. Rep., p. 100, the said James Boorman represented the said conveyance to said Robert Dyson of December 26, 1829, as a real sale, the price whereof went into the hands of said Matthew St. Clair Clarke, and as necessary to make a division among the heirs, whereas your orator and oratrix charge that the said Boorman then and always knew that the said Dyson was the subordinate agent of the executors of James R. Smith; that no money was ever paid by him for the conveyance to him, or to him for his reconveyances, and that the property easily could be and was really divided in kind by the said reconveyances, and was substantially so divided by the aforesaid agreement among the heirs, of October 21, 1829, and that he knew perfectly well that said conveyance, like other fraudulent ones of the 15th of November, 1829, to satisfy the claim of the wife of said Matthew St. Clair Clarke, was made exclusively for the purpose of giving to the children of said James R. Smith the appearance of having a title in fee to said property, and to enable them to sell it, which fraudulent design was fully successful, as your orator and oratrix believe, to such an extent that neither they nor their said father ever received anything from the estate of said James R. Smith, and that the said James Boorman was fully informed of all the transactions mentioned in this bill; and that he was on terms of great intimacy with the said Matthew St. Clair Clarke, and particularly with the said
25 P. W. Radcliff, who was the principal agent, in relation to the management of this estate.

And at other times the said Boorman held out and pretended that the heirs of the said James R. Smith, in conjunction with his co-executors, had made a valuation of the property remaining after the payment of debts, for the purpose of making a sale thereof, whereas the aforesaid

deeds of November 15, 1829, to which the said Boorman was a party, it had been declared that the said valuation had been made for the purpose of a division in kind; that a division in kind with the said James C. R. Smith, the son of the testator, and of the one-third of the shares of the daughters of which they had the absolute ownership, actually took place on the 15th of November, 1829, and that the reconveyances by the said Robert Dyson to the three daughters of said James R. Smith, of December 26, 1829, of the property which had on the same day been conveyed to him by the executors and heirs of said James R. Smith was the execution of the agreement for a division in kind, referred to in the aforesaid deeds of November 15, 1829.

And, at other times, the said Boorman held out that he had been advised by counsel, that the said George Augustus D. Clarke, the son of the said Jeanet Clarke, and father of your orator and oratrix, had, after attaining the age of majority, legally confirmed the acts of his said mother in the settlement of said estate, whereas your orator and oratrix charge that the said George Augustus D. Clarke was almost as much as his mother, under the control of the said Matthew St. Clair Clarke, who was his father's brother and his mother's brother-in-law; that the said George Augustus D. Clarke was very often an inmate of the house of said Matthew St. Clair Clarke, who exercised fatherly authority over him; that the said George Augustus D. Clarke never resided in New York, and never had the means of investigating the settlement of his grandfather's estate, particularly as there was nothing on record even in New York, showing the composition of said estate, and even if the said George Augustus D. Clarke had ever done anything which might be construed into acquiescence to acts by which he was injured, which your orator and oratrix deny, any such supposed acquiescence on his part would be invalid without consideration, and not binding because he was totally ignorant of the nature and extent of his rights, and under the irresistable influence of said Matthew St. Clair Clarke.

26 And, at other times, the said James Boorman gave out that said conveyance to said Dyson, of December 26, 1829, was made with the consent of all the parties interested, but your orator and oratrix aver that their father, as ultimate beneficiary under his grandfather's will, was a party in interest, then a minor and not represented in the premises by his said mother, whose interest therein was opposed to his own, and he was truly only represented by said executors, who, under the will of their testator had assumed the trust to protect the rights of the testator's grandchildren under said will, and who, as now complained of, flagitiously contrived by said conveyance to said Dyson to deprive said ultimate beneficiaries of the bequest.

And your orator and oratrix further show that the power given by the aforesaid will of said James R. Smith, to his executors to sell the property of his estate, was taken away by the 12th article of his aforesaid codicil, if not altogether, at least as soon as the debts and legacies were paid.

And they further aver that if they cannot recover the valuable property bequeathed to their father by the aforesaid will of their said great-grandfather, James R. Smith, and the portion thereof embraced in the aforesaid deed of said Robert Dyson to said Jeanet Clarke, of Dec. 26, 1829, it is entirely owing to the conveyance of the said James Boorman with his aforesaid co-executor, Matthew St. Clair Clarke.

And whereas the said Matthew St. Clair Clarke, died at Washington, D. C., in May, 1852, utterly insolvent, and the said executors of the will and testament of the said James R. Smith, were bound, jointly and sev-

erally, forthe performance of the trust they assumed by qualifying under said will, your orator and oratrix now proceed against the estate of the said James Boorman for the performance of the duties he had assumed under said will.

Your orator and oratrix further show that the said Peter W. Radcliff, who was his, (the said Boorman's) brother in-law, and legal adviser in the settlement of the said estate, was the person who, as your orator and oratrix believe and charge, prepared all the aforesaid fraudulent and simulated deeds of the 15th of November, and 26th of December, 1839, and at whose instance all the said intruments were recorded; that said Radcliffe undoubtedly kept the said Boorman fully advised of everything occurring in the business of said estate; that said Radcliff having been gained over by the said Matthew St. Clair Clarke, by induce-
27 ments not known to your orator and oratrix, to assist said Matthew St. Clair Clarke, in preparing the means to swindle your orator and oratrix and their father out of their inheritance, probably persuaded said Boorman to connive at said frauds, but that said Radcliff, conscious that said Boorman had laid himself open to a serious responsibility, sought to protect said Boorman by procuring the execution of an instrument in the nature of a bond of indemnity, by which the said Matthew St. Clair Clarke, Jeanet Clarke, and Joseph Duncan agreed to hold the said Boorman harmless, and protect him against any claim arising out of his connection with the estate of James R. Smith; that said instrument was dated the 10th of July, 1830, the day after the acknowledgment in New York, of the aforesaid fraudulent conveyances of December 26, 1829, and before they were recorded; that said instrument of July 10, 1830, never was put on record, but must be in the possession of the executors of said Boorman, wherefore it is prayed that this honorable court may order them to produce the same.

Your orator and oratrix further show that the aforesaid so-called indemnity-bond never could produce any effect upon the said Jeanet Clarke, who, as above stated, did not know what said Matthew St. Clair Clarke made her sign, or signed for her, or still less upon her descendants, whose rights it was attempted to induce her to give 'way, and who never received anything from her estate.

And your orator and oratrix further show that the said James Boorman, instead of carrying out said trust, or having other trustees appointed by application to the competent judicial authority to be relieved from his duties under said will, continued, even after the death of the said Matthew St. Clair Clarke, to act as executor of the said James R. Smith on various occasions, and particularly in the year 1861, when he sold, in his said capacity as sole surviving executor, some stock belonging to the said estate of James R. Smith, to wit, stock of the Elmira and Southport Bridge Co., and that your orator and oratrix, nor any one representing them, ever received any portion of the proceeds of said stock.

Your orator and oratrix further show that the aforesaid Reuben Middleton, of Prince George County, in the State of Maryland, who is their general guardian, was appointed their guardian ad litem by the
28 honorable supreme court of the city and county of York to assist them in this suit, and has agreed to act as their next friend in the premises.

And your orator and oratrix further show that the said James Boorman died in the city of New York in the beginning of 1866, leaving a last will and testament, by which he appointed the defendants, James B. Johnson and Adam Norrie, his executors, which will was probated in

the surrogate's office of New York on the 17th of February, 1866, on which day also letters testamentary were issued to his said two above-named executors.

And your orator and oratrix further show that they have applied to the said James B. Johnson and Adam Norrie, the executors of said James Boorman, to render an account of the administration of the estate of the said James R. Smith by the said James Boorman, as one of and the last surviving executor of said estate, to deliver to them the legacy accruing to them under the aforesaid will and codicil of the aforesaid James R. Smith, or to pay to them out of the assets of the estate of said Boorman, if the delivery in kind of the said legacy was now impossible, the present and just value of the rights and property to which they were entitled under said will and codicil, which was lost to them by the fraud, breach of trust, connivance, and wilful neglect of said Boorman, which property is that described in the above-recited conveyance by said Robert Dyson to the said Jeanet Clarke, of December 26, 1829, and consists of land in various parts of the State of New York to the extent of (when omitting fractional parts of acres) 5,283 $\frac{72}{100}$ acres, and of lots in the city of New York, viz: of nine lots in Stanton street, between Forsyth and Eldridge streets; 13 lots between 5th and 6th avenues in 17th, 18th, and 19th streets; and two lots in 26th and 27th streets, between 7th and 8th avenues; but that the said James B. Johnson and Adam Norrie have refused to reply to said application; all which doings of said defendants are contrary to equity and good conscience, and tend to the manifest injury, wrong, and oppression of your orator and oratrix in the premises. In consideration whereof, and as your orator and oratrix are entirely remedyless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this sort are properly cognizable and relievable; to the end, therefore, that the said defendants may, if they can, show why your orator and oratrix should not have the relief herein prayed, and may, upon their respective and several oaths, and
29 according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, and direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, that is to say:

1st. Are you not the executors of the last will and testament of the late James Boorman, and are not the date of his death and of the probate of his will correctly set forth in this bill?

2d. Did you or either of you, in said capacity of executors of said James Boorman, not take possession of the papers left by him; or, if not, are you not entitled to the possession of said papers?

3d. Did you or did you not make or procure to be made an inventory of said papers; and, if so, did you not find among them papers relating to the estate of said James R. Smith, mentioned in this will.

4th. Was or was not the said Boorman the executor of the said Peter W. Radcliff, and are there not among the papers left by said Boorman papers left by said Radcliff relating to the estate of said James R. Smith?

5th. Is there any—or, are there not among said papers the following, either in the original or in copies:

A schedule and statement made out by the said James R. Smith of his personal and real proporty.

An agreement between the children and executors of said James R. Smith and his heirs, for the valuation of his remaining estate after the payment of debts, of Oct., 1829.

An indemnity bond or release, or the document in writing, executed by the children of said James R. Smith, in favor of said James Boorman, to hold him harmless against any claim arising out of his management of the estate of said James R. Smith, dated July 10, 1830, and was said document ever put on record?

6th. Did you know Robert Dyson mentioned in this bill; and, if so, is he dead or alive; and, if dead, when did he die; and, if alive, where does he reside; and what was his and P. W. Radcliff's relationship by blood or marriage to the said James R. Smith and James Boorman?

7th. Have you or have you not other papers besides those above mentioned under your control, as executors of the said James Boorman, of other papers relating to the estate of the said James R. Smith; or have you not, if not in your possession, at least a right to control them?

And your orator and oratrix further show, that the said James
30 B. Johnson and Adam Norrie, as executors of the said James Boorman, may come to a just and fair account of the settlement of the estate of the said James R. Smith, of which the said James Boorman was one and the last surviving executor, and may be ordered to deliver to your orator and oratrix the above-mentioned legacy accruing to them under the aforesaid codicil of said James R. Smith; or, if that be impossible, by the acts, doings, and connivance of the said James Boorman, to pay to them the just and present value of the real estate accruing to them under said legacy; and while your orator and oratrix reserve the rights of claiming that the said defendants shall deposit in this office of this honorable court, for their inspection, within a reasonable time, all the papers relating to the estate of the said James R. Smith, which the said James Boorman may have had in his possession at the time of his death, they further pray the said defendants, James B. Johnson and Adam Norrie, be enjoined from disposing of or distributing the assets of the estate of said James Boorman until the claims of your orator and oratrix preferred in this bill are satisfied.

May it please your honors to grant unto your orator and oratrix the most gracious *suit* of su'pœna of the United States of America, to be directed to the said James B. Johnson and Adam Norrie, testamentary executors of the said James Boorman, and to the rest of the confederates, when discovered, thereby commanding them and every one of them, at a certain day, and under a certain pain established by the rules of the Supreme Court of the United States, permanently to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to and perform and abide such order and decree therein as to your honors shall seem meet, and that your orator and oratrix may have such further and other relief as the nature of their case may require according to equity and good conscience.

HUGHES, DENVER, & PECK,
258 *G streets, Washington, D. C.*
LOUIS JANIN & SON,
449 14*th street, Washington, D. C.*
GOEPP & STERN,
35 *Wall street, New York, of Counsel for Plaintiffs.*

Each of the defendants, James B. Johnson and Adam Norrie, is required to answer the above interrogatories.

H. D. & P., L. J. & SON, G. & S.

Filed April 26, 1869.

31 U. S. circuit court, southern district of New York.

G. A. CLARK & AL.
vs.
BOORMAN'S EXECUTORS.

SIR: Please enter our appearance in this suit, as solicitors for the defendants, James Boorman Johnston and Adam Norrie, executors of the last will and testament of James Boorman, deceased.

Dated New York, June 7, 1869.

Yours, &c.,

KNOX & MASON,
No. 74 Broadway, New York City.

To KENNETH G. WHITE, Esq.,
Clerk Circuit Court U. S.

(Endorsed:) U. S. circuit court, southern district N. Y. G. A. Clarke et al. vs. Boorman's executors. Appearance. Knox & Mason, solicitors for def'ts. Filed June 7, 1869.

32 In the circuit court of the United States for the southern district of New York, second circuit, in equity.

The joint and several answer of James B. Johnston and Adam Norrie, as executors of the last will and testament of James Boorman, deceased, defendants to the bill of complaint of George Augustus Clarke and Jeanet Virginia Clark, complainants, against the said defendants.

These defendants, respectively, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is necessary or material for them to make answer to, severally answering, say that these defendants are executors of the last will and testament *of* James Boorman, deceased, in the said bill mentioned and referred to, and that the date of said Boorman's death, and of the probate of his will are correctly set forth in said bill; and that they, these defendants, in their said capacity of executors, did take possession of the papers of left by him, said James Boorman; and that they did not, nor did either of them, make or procure to be made any inventory of such papers or of
33 any of them; and that the said Boorman was not the executor of Peter W. Radcliffe in the said bill named, but was one of the executors of the last will and testament of the said Peter W. Radcliffe.

And these defendants are informed and believe that there was and still is among the papers left by said James Boorman, an account-book left by said Radcliff, purporting to contain an account of his, said Radcliff's transactions, as agent of the estate of James R. Smith, mentioned in said bill, and on and between the ninth day of March, one thousand eight hundred and eighteen *hundred and eighteen*, and the seventh day of December, in the year one thousand eight hundred and twenty-four; but these defendants, further answering, say, each for himself, that he does not know, is not informed, and does not believe that there was or is any other paper left by said Boorman relating to the estate of said James R. Smith, that was left by said Radcliff.

And these defendants, further answering, say that, among the papers

left by said James Boorman, there was and still is an original document in writing, which may be called an indemnity-bond and release in favor of said James Boorman, executed by Matthew St. Clair Clark, James C. R. Smith, Jeanet Clarke, and Joseph Duncan, all in said bill named under their respective hands and seals, bearing date the tenth day of July, in the
34 year of our Lord one thousand eight hundred and thirty, whereby it was witnessed, that the said Matthew Saint Clair Clarke and Joseph Duncan, as well for themselves as their respective wives, and the heirs, executors, administrators, and assigns of the said wives, respectively, and the said Jeanet Clarke, and James C. R. Smith, each for himself and herself, and their respective heirs, executors, administrators, and assigns, in consideration of the premises, and for and in consideration also of the sum of one dollar, lawful money of the United States, to them respectively in hand paid by the said James Boorman, at or before the sealing and delivery of those presents, the receipt whereof was thereby acknowledged, had, and that by those presents they, and each of them, did, fully and absolutely release, exonerate and discharge him, the said James Boorman, his heirs, executors, and administrators, of and from all sum and sums of money by him, the said James Boorman, had or received, or which he might or could by any ways or means whatsoever have collected, had or received, in pursuance of the said last will and testament of said James R. Smith, or any of the trusts or powers therein or in the codicil thereto contained, or by means of his being an executor of such will and testament, and of and from all reckonings and accounts or liability to account for or concerning the same, or any part thereof, and also of and from all other reckonings, accounts, claims, and demands whatsoever, for, on account of, or in any way or manner
35 relating to, or concerning the estate of the said James R. Smith, deceased, whether real or personal, or any trust, confidence, or power relating thereto, or to any part, share, or portion thereof; and that each of them did thereby, jointly and severally, covenant and agree to and with the said James Boorman, his heirs, executors, and administrators, to save harmless, and indemnify him and them, and his and their lands, chattels, and estates, of and from all losses, damages, suits, actions, costs, charges, expenses, claims, and demands whatsoever, for, by reason of, or on account of his having made or executed, or joined in the making or execution of the several deeds, indentures, or conveyances in the same document before-mentioned or referred to, or any or either of them, or for, by reason, or on account of any other act, matter, or thing by him done, committed or suffered, touching or concerning the estate, real or personal, of the said James R. Smith, deceased, or any part, share, or portion thereof, whether under and by virtue of the powers and trusts in such last will and testament, and the said codicil contained, or any of them, or otherwise howsoever.

And these defendants do not know and are not informed that said document was ever put on record, and as there is not, nor ever was in the State of New York, any usage or practice of recording such instruments, or any office or place established by law for that purpose, they, these defendants, do not believe that such document was ever put on record.

36 And, further answering, each as to himself according to his own personal knowledge, and as to the other defendant according to his information and belief, these defendants say: That these defendants do not know, are not informed, and do not believe that, among any papers left by the said James Boorman, whether left by said Radcliff or not, or whether taken possession of by these defendants, or either of them, or

not, there were or was, or are or is, either in the original or in any copy or copies, any schedule or statement of the real and personal property of said James R. Smith, or of either of them, or of any part of either of them, made out or purporting to be made out, by the said James R. Smith, or by any other person or persons, or any agreements, or paper purporting to be an agreement, of Oct. , 1829, or bearing any date, or with or without date, between the children and executors of said James R. Smith, and his heirs, or by, or between, those persons or any of them, for the valuation of the remaining estate of said James R. Smith, after the payment of debts.

And these defendants, further answering, say that they have a right to control and have under their control, as executors of the said James Boorman, other papers besides those mentioned in the said bill above, and, prior to the seventh interrogatory, in such bill set forth, and, also, other papers relating to the estate of said James R. Smith.

37 And these defendants, further answering, say that they knew Robert Dyson, in the said bill mentioned, in his life-time, and that these defendants do not know, are not informed, and do not believe that he, the said Robert Dyson, was living when said bill was filed, or then had any residence, or that there ever was any relationship of said Robert Dyson, by blood or marriage, to the said James Boorman. And these defendants, further answering, say that they do not know what, if any, was the relationship of the said Robert Dyson to the said James R. Smith, or when the said Robert Dyson died, or what, if any, was the said Peter W. Radcliff's relationship, by blood or marriage, to the said James Boorman, or the said James R. Smith. But these defendants are informed and believe that the said Robert Dyson was a nephew of said James R. Smith, and died about fifteen years ago, and that the said Peter W. Radcliff married a sister of said James Boorman's wife, and that there was no other relationship of said Robert Dyson or Peter W. Radcliff, by blood or marriage, to the said James R. Smith, or the said James Boorman.

And these defendants, further answering, say that after the last will and testament of the said James Boorman was admitted to probate, as stated in said bill, letters-testamentary thereof were, in due form of law, and by the surrogate of the county of New York, he being the proper surrogate, having jurisdiction in that behalf, granted and issued to these

38 defendants, as executors as aforesaid, on the seventeenth day of April, one thousand eight hundred and sixty-six; and that these defendants, on the same day, duly qualified as such, and accordingly took upon themselves, as such executors, the execution of such will.

And these defendants, further answering, on information and belief, say that in and by the last will and testament of the said James R. Smith, in the said bill mentioned, it was and is declared and provided as follows, that is to say: "I do hereby declare my will to be that it shall and may be lawful to and for my said executors to employ one or more agent or agents for the management of the concerns of my said estate, and the same at their pleasure to dismiss and appoint others, and by and out of all and any of the money which may, by virtue of this my will, or any trust therein declared, come to their or any of their hands, to deduct, retain to, and re-imburse themselves, all such reasonable costs, charges, and expenses, as they, respectively, shall or may sustain, expend, or be put unto, in or about the execution of this my last will and testament; and also, that my said executors, their respective heirs, executors, and administrators, shall be charged and charg'able, only, every of them, for and with his or her

own respective receipts and payments, acts and wilful defaults, and not otherwise; and shall not be charged or charg'ble with or for any sum or sums of money other than such as shall actually and re-
39 spectively come to his, her, or their hands, by virtue of this my will; nor with or for any loss or damages which may happen in or about the execution of all or any of the trusts hereby in them reposed without his, her, or their, respective wilful default," as by such last will and testament, reference being thereunto had, may appear, and to which, for greater certainty in the premises, these defendants pray leave to refer.

And these defendants, further answering, say that they do not know, are not informed, and never heard, save by vague and indefinate suggestions which are contained in said bill, and do not believe, and they therefore deny, that the said James Boorman, deceased, or the said Matthew St. Clair Clarke, or the said Peter W. Radcliff, or any other person in the said bill for any of those purposes mentioned, or referred or alluded to, ever did, by any act, neglect, or omission, commit, or design or intend to commit, or connive at, or concur or co-operate in committing, or contrive or combine, or confederate to affect or accomplish, any breach or violation of trust, or fraud, or fraudulent acts or act, as in said bill is untruly suggested, or ever did, directly or indirectly, deprive, or design or intend, or connive or concur, or co-operate or contrive, or combine or confederate, directly or indirectly, to deprive, the grandchildren of the said James R. Smith, or any of them, of any right, benefit, legacy, or bequest, estate, or remainder, given or intended for them, or any of them,
40 by the said will of the said James R. Smith, or any part thereof, or in any way, design, or intend, to prejudice such grandchildren, or any of them, as in the said bill is untruly suggested.

And these defendants, further answering, on information and belief, say that, on or prior to the twenty-eighth day of December, in the year one thousand eight hundred and thirty, the said James Boorman faithfully, fairly, fully, and finally accounted for, distributed, and paid over to the respective persons rightfully entitled thereto by law, or under the last will and testament of the said James R. Smith, all the personal estate which was of the said James R. Smith, deceased, and all proceeds thereof, and all rents, issues, profits, or proceeds of any real estate of the said James R. Smith, deceased, which had ever come to the knowledge, possession, or power of the said James Boorman, as executor, trustee, or otherwise, or for which, on the last-named day, or at any time previously thereto, the said James Boorman was in any manner chargable or accountable to any person or persons whomsoever.

And these defendants, further answering, on information and belief, say that he, the said James Boorman, as executor, trustee, or otherwise, never did, within thirty-eight years next previously to the filing of the said bill or the commencement of this suit, or at any time after such accountings, or on or after such last-mentioned date, act on any
41 occasion as executor of the last will and testament of the said James R. Smith, or as trustee under such will, or claim to be or to act as such executor or trustee, or claim, receive, or get into his possession, power, or control any personal estate which was of the said James R. Smith, deceased, or any proceeds of any such personal estate save and except that, in the year one thousand eight hundred and sixty-one, the said James Boorman, as sole surviving executor of the said James R. Smith, deceased, fairly sold, for the sum of fifty-two dollars and fifty-seven cents, which was its full value, certain stock of the Elmira and

Southport Bridge Company, a corporation in the State of New York, which had stood in the name of said James R. Smith, and been a part of his personal estate, and at the same time, in the same last-mentioned year, received the further sum of sixty dollars and twenty cents for dividends due thereon.

And these defendants, further answering, say that, owing to the great lapse of time since such final accounting, distribution, and payment, they, these defendants, do not know, are not informed of, and therefore cannot state the particulars thereof, but they are advised, and they therefore insist as a just presumption of fact in the premises, that the said stock and all interest therein, and all dividends accrued or to accrue thereon, were included in such accounting, distribution, and payment, and consequently that no right to account or payment of,
42 concerning, or out of the same stock or dividends could thereafter have accrued to the said Jeanet Clark, or her heirs, executors, administrators, next of kin, descendants, legatees, or representatives, or any of them, by reason of any sale, receipt, or acts of the said James Boorman in the said bill or this answer mentioned or alluded to, of or concerning such stock and dividends, or either of them, or any part of either of them.

And these defendants, further answering, say that they are advised, and they therefore insist, that if any claim, demand, cause of action, or suit ever did or could have arisen against the said James Boorman by reason of any such sale, receipt, or last-mentioned acts, or any of them, there was and might be had at all times, whilst any right of action or suit in respect thereof subsisted, a plain, adequate, complete, and perfect remedy at law against him, the said James Boorman, or his executors, on and for every such claim, demand, and cause of action or suit.

And these defendants, on information and belief, further answering, say that no heir, executor, administrator, next of kin, descendant, legatee, or representative of the said Jeanet Clarke, or of the said George Augustus D. Clarke, hath ever asked, requested, sought, or claimed, either from the said James Boorman or his executors, in any way unless it be by the said bill in this suit, any account, payment, or compensation for or on account of such sale, receipt, or last-mentioned acts, or any of them; and further, that no claim or demand of the said com-
43 plainants or either of them in respect thereof could ever have amounted to so much as the sum or value of fifty dollars, or been sufficient in amount or value to entitle the said complainants, or either of them, or any person in their behalf, by the course and practice of equity, or the act of Congress in that behalf, to maintain this suit concerning the same; and in respect of every claim, demand, or cause of action, or suit intended to be made or inforced by the said bill, by reason of such receipt, sale, or last-mentioned acts of said James Boorman, or any of them, these defendants pray the same benefit and advantage of their said several objections to this suit as to the said remedy at law, the said non-claim and the said insufficiency of such sum, amount, or value, as if each of said objections had been separately set up or stated in a more precise and formal manner, by plea, demurrer, or otherwise,

And these defendants, further answering, on information and belief, say that, if in favor of the said Jeanet Clarke, or of the said George Augustus D. Clarke, or the executors, administrators, or representatives of either of them, or the estate of either of them, or in right of either of them, any causes or cause of action or suit in the said bill mentioned, or intended to be thereby enforced, ever accrued by reason of such sale, receipt, or last-mentioned acts of said James Boorman,

or any of them, against the said James Boorman, or these defendants, as his executors, subsequently to the death of the said Jeanet
44 Clarke and George Augustus D. Clarke, respectively, such causes of action or suit did not, nor did any of them, or any part thereof, arise or accrue within seven years and four months next before the filing of the said bill or the commencement of this suit; and these defendants pray the same benefit of this objection and of the statute for the limitation of suits and actions in this behalf, and the rules of equity in respect to acquiescence and non-claim, as if these defendants had stated or set up the same in a more precise and formal manner, by plea, demurrer, or otherwise.

And these defendants, on information and belief, further answering, say that every trust or duty which by the last will and testament of the said James R. Smith or the codicil thereto, or by the law of the land, or in equity, was devolved or imposed upon the said James Boorman, in respect to the estate, real and personal, of the said James R. Smith, or either of them, or any part of either of them, as also every power in respect thereto, he, the said James Boorman, was by such will or codicil or by law or in equity required to exercise, was well, faithfully, and truly executed, fulfilled, performed, and exercised by him the said James Boorman, on or before the death of the said Jeanet Clarke, and more than thirty-two years before the filing of said bill in this suit or the commencement of this suit.

And these defendants, on information and belief, further answer-
45 ing, say that all the lands, tenements, hereditaments, and real estate which were of the said James R. Smith, at the time of his death, and each and every part and parcel thereof, were and was, with the knowledge of the said George Augustus D. Clarke, at and immediately after the death of the said Jeanet Clarke, in the peaceable and quiet possession of some person or persons other than the said James Boorman, deceased, his heirs, devisee, or executors, holding and claiming the same and the rents and profits thereof as his or their absolute property, in fee-simple, under the said deeds and conveyances in the said bill mentioned and referred to, or some or one of them, and that such person or persons, or his or their respective heirs or assigns, in that behalf continued so to possess, hold, and claim the same, peacefully, quietly, and without any let, suit, trouble or disturbance, by or from the said George Augustus D. Clarke, his heirs, devisees, or descendants or any of them, and with the full knowledge and acquiescence of the said George Augustus D. Clarke, his heirs and descendants and every of them, for more then twenty-one years next thereafter and until the present time.

And these defendants, further answering, say that they do not know, are not informed, save by vague and indefinite suggestions contained in said bill, and do not believe, and they therefore deny, that the said James Boorman or the said Matthew St. Clair Clarke, or any other person or persons in said bill for this purpose mentioned,
46 or referred or alluded to, ever artfully or otherwise concealed, or conceived a design to conceal, or intended to conceal, anything concerning any disposal or disposition of the estate of the said James R. Smith, or any part thereof; and in like manner they deny that George Augustus D. Clarke, the son of said Jeanet Clarke, was at any time during his life without the means of investigating the settlement of the estate of his grandfather, the said James R. Smith.

And these defendants, on information and belief, further answering, say that the said Jeanet Clarke, at all times during her life, from and

after the said twenty-eighth day of December, in the year one thousand eight hundred and thirty, and before that day had, and that the said George Augustus D. Clarke, during his whole life, from and after his age of twenty-one years, and also before that time, had full means to conduct such investigation, and full and perfect knowledge concerning the estate of the said James R. Smith, and of every deed, conveyance, disposition, and settlement of or concerning the same estate or any part thereof, which had been made or which is mentioned or alluded to in this answer or in the said bill, and in which the said James Boorman, deceased, ever in any way, directly or indirectly, took part, participated, or was concerned, or is in the said bill alleged to have taken part, participated or been concerned, or for which he ever was responsible
47 or liable, save and except only, it may be, the mere acts of selling such stock, and receiving such dividends. And these defendants, on information and belief, further answering, say that the said Jeanet Clarke and George Augustus D. Clarke, *which* such means of knowledge and such knowledge as aforesaid, at all times during their respective lives, from and after the said twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty, and their respective heirs, devisees, legatees, next of kin, issue, descendants and representatives, until the filing of the said bill in this suit have, and each and every of them hath, always acquiesced in every such deed, conveyance, disposition, and settlement, save and except only it may be such mere acts of selling said stock, and receiving such dividends; and, on information and belief, these defendants, further answering, say that the said George Augustus, D. Clarke, in his lifetime and after the death of his said mother, fully and expressly approved, ratified, and confirmed every such deed, conveyance, disposition, and settlement, except only, it may be the said mere acts of selling such stock and receiving such dividends.

And these defendants, further answering, on information and belief, say that, before and on the said twenty-eighth day of December, in the year of our Lord, one thousand eight hundred and thirty, the said Jeanet Clark was a single woman, over twenty-one years of age,
48 and was not then or ever thereafter during her life under any disability, and that the said James Boorman, deceased, had not, on that day or at any time thereafter, as executor, trustee, or otherwise, nor have these defendants or either of them, as his executors or otherwise, ever had any estate, right, interest or title, property, claim, or demand in or to any land, tenements, hereditaments, or real estate which were or was of said James R. Smith at the time of his death, or in or to any rents, profits or proceeds of any such lands, tenements, herlditaments, or real estate, or any possession of or trust or power or control over or in respect to any such lands, tenements, hereditaments, or real estate, or rents, profits, or proceeds thereof. And they, these defendants, further say that the said bill of complaint in this suit was not filed, nor this suit in any way commenced, within thirty-eight years after the last-mentioned date.

And these defendants, further answering, on information and belief, say that the said George Augustus D. Clarke was the only child and sole heir at law of the said Jeanet Clarke, and was twenty-one years of age, on or before the first day of October, in the year one thousand eight hundred and thirty-six; and that thereafter, on the fifth day of September, in the year one thousand eight hundred and forty-seven, his said mother died a widow, without leaving any husband her sur-
49 viving; and that the said George Augustus D. Clarke survived

her, and so being at her death of full age, was not then or thereafter under any disability, and so continued free from any disability for more than eight years thereafter and until his death; and these defendants, further answering, on information and belief, say that all and every the acts, doings, and omissions of the said James Boorman in the said bill mentioned or alluded to, if any there were, to the prejudice or detriment of any estate, right, title, interest, or claim of her, the said Jeanet Clarke, or of him, the said George Augustus D. Clarke, in or to any personal estate, or lands, tenements, hereditaments, or real estate, which were or was of the said James R. Smith at the time of his death, or in or to any rents, profits, or proceeds of the same, had happened or before the said fifth day of September, one thousand eight hundred and forty-seven, and on or before the said twenty-eighth day of December, one thousand eight hundred and thirty; and these defendants, further answering, on information and belief, say that the said James Boorman had not, at any time, after the death of said Jeanet Clarke, as executor, trustee, or otherwise, nor have these defendants, or either of them, as his executors as aforesaid, or otherwise, ever had any trust, estate, right, interest, title, property, claim, or demand, in or to any lands, tenements, hereditaments, or real estate, which were or was of the said James R. Smith at or before the time of his death, or in
50 or to any profits or proceeds of any such lands, tenements, hereditaments, or real estate, or any possession of or power or control over or in respect to any such lands, tenements, hereditaments, or real estate, or any rents, profits, or proceeds thereof.

And these defendants, further answering, on information and belief, say that all causes and every cause of action or suit that ever accrued or could have accrued to the said Jeanet Clarke, her heirs, executors, or administrators, or to the said George Augustus D. Clarke, his heirs, devisees, descendants, executors, or administrators, against the said James Boorman or his executors, for or by reason of any such acts, doings, or omissions of said James Boorman, if any there were, or for any account, distribution, or payment of the real or personal estate, which was of the said James R. Smith, deceased, or any part thereof, or of the proceeds thereof, or for or by reason of any matters or things mentioned or complained of in said bill, did accrue before or immediately after and upon the death of the said Jeanet Clarke, and not afterwards; and these defendants, further answering, on information and belief, say that the said bill of complaint in this suit was not filed, or this suit in any way commenced, within thirty-two years after the said George Augustus D. Clarke so attained his full age.

And these defendants, further answering, on information and belief, say that the alleged and pretended causes of action or suit in the said bill mentioned or referred to did not, nor did any part of them, or
51 of any of them, arise or accrue within six years, or within seven years, or within ten years, or within twenty years, or within twenty-one years and seven months before the filing of the said bill of complaint in this suit or the commencement of this suit; nor were nor was the facts or any fact constituting or forming or contributing to any alleged fraud, committed or intended by the said James Boorman, or alleged or pretended or complained of in said bill of complaint in this suit discovered by any aggrieved party or parties, person or persons, or any of his, her, or their representatives, within six years, or within seven years, or within ten years, or within twenty years, or within twenty-one years and seven months before the filing of the said bill of complaint in this suit or the commencement of this suit; nor was the said

bill filed or this suit commenced within three years after letters-testamentary of the last will and testament of the said James Boorman, deceased, were granted and issued to these defendants as executors of such will; and these defendants, relying upon the statutes for the limitation of actions and suits, and the rules and principles of equity against entertaining suits or granting discovery or relief after such long acquiescence and non-claim as aforesaid, by the parties aggrieved or pretending or alleged so to be, pray and claim to be allowed the same benefit and advantage of such statutes, rules, and principles, long acquiescence, and non-claim, as if they, these defendants, had set up or stated the same and every of them in a more precise and formal manner by plea, demurrer, or otherwise.

52 And as to all alleged causes of action or suit, and every alleged cause of action or suit against the said James Boorman or his executors in the said bill of complaint set up or pretended, for or by reason of any alleged or pretended fraud or wrong or fraudulent or unlawful executing, making, uniting in or conniving at any deed or deeds, conveyance or conveyances, by him, the said James Boorman, in his life-time, these defendants, further answering, say that they are advised and believe, and they, therefore, insist that such alleged causes of action or suit and every of them, if any such there were or was, and every part of every of them, wholly ceased, terminated, and became irremediable at law or in equity by, at, and upon the death of him, the said James Boorman, and incapable of being enforced or prosecuted against these defendants or either of them as executors, as aforesaid; and these defendants pray the same benefit and advantage of this objection as if they had stated or set up the same in a more precise and formal manner by plea, demurrer, or otherwise.

And as to all causes of action or suit, and every alleged cause of action or suit against the said James Boorman or his executors in the said bill of complaint set up or pretended, which, of right, accrued to the said Jeanet Clarke, or might have been enforced at law or in equity by the said Jeanet Clarke in her life-time, for any account, payment or distribution of or concerning any personal estate of or which was of the said James R. Smith, these defendants, further answering, say

53 that they are advised, and they, therefore, insist that the said complainants have not, nor hath either of them any right, title or interest in any of such pretended causes of action or suit, or any part thereof; and that each and every such alleged cause of action or suit, and every part thereof, if any such there be, of right and by the law of the land belongs to and can only be claimed or sued upon by an executor, administrator, or other lawful personal representatives of the said Jeanet Clarke, deceased; and that the executor or administrator of the said Jeanet Clarke, deceased, or her other lawful personal representatives is, as to every such pretended cause of action or suit, and every part thereof, a necessary party to this suit, and should be the complainant therein; and inasmuch as no executor, administrator, or lawful personal representative of the said Jeanet Clarke as a complainant in this suit, or otherwise a party thereto, these defendants pray the same benefit and advantage of this objection to this suit as if they had stated or set up the same in a more precise and formal manner by plea, demurrer, or otherwise.

And as to all causes of action or suit and every alleged cause of action or suit against the said James Boorman or his executors in the said bill of complaint set up or pretended, which, of right, accrued to the said George Augustus D. Clarke, or might have been enforced at

law or in equity by the said George Augustus D. Clarke in his life-time, for any account, payment, or distribution of or concerning any
54 personal estate of or which was of the said James R. Smith, or any rents, profits, proceeds, or price, or value of any lands, tenements, or real estate of or which were or was of the said James R. Smith, these defendants, further answering, say that they are advised, and they, therefore, insist that the said complainants have not, nor hath either of them any right, title, or interest in any of such pretended causes of action or suit or any part thereof; and that each and every such alleged cause of action or suit and every part thereof, if any such there be, of right and by the law of the land belongs to and can only be claimed or sued upon by an executor, administrator, or other lawful personal representative of the said George Augustus D. Clarke, deceased, and that the executor or administrator of the said George Augustus D. Clarke, deceased, or his other lawful personal representative is, as to every such pretended cause of action or suit and every part thereof, a necessary party to this suit, and should be the complainant therein; and inasmuch as no executor, administrator, or lawful personal representatives of the said George Augustus D. Clarke is a complainant in this suit, or otherwise a party thereto, these defendants pray the same benefit and advantage of this objection to this suit as if they had stated or set up the same in a more precise and formal manner, by plea, demurrer, otherwise.

And these defendants deny all and all manner of unlawful combination or confederacy, act or omission, wherewith the said James
55 Boorman, now deceased, and these defendants or any of them are or is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, necessary or material for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, and avoided, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and they humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JA'S B. JOHNSTON.
A. NORRIE.

, *Solicitor for D'f'ts.*
JOHN M. MASON, *of Counsel.*

56 SOUTHERN DISTRICT OF NEW YORK,
City and County of New York:

Adam Norrie, one of the defendants in this suit, being duly sworn, doth depose and say that he has heard read the foregoing answer subscribed by him, and knows the contents thereof and that the same is true, of his own knowledge, except as to the matters that ar' therein stated to be on his information and belief, and that as to these matters he believes it to be true.

A. NORRIE.

Subscribed and sworn to before me this 13th day of September, 1869
JOSEPH GUTMAN, JR.,
United States Commissioner S. D. N. Y.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

James B. Johnston, one of the defendants in this suit, being duly sworn, doth depose and say that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters that are therein stated to be on his information and belief, and that as to these matters he believes it to be true.

JA'S B. JOHNSTON.

Subscribed & sworn to before me this 13th day of September, 1869.
JOSEPH GUTMAN, JR.,
United States Commissioner S. D. N. Y.

57 (Indorsed:) In the circuit court of the United States for the southern district of New York, second circuit. In equity. George Augustus Clarke, &c., Jeanet Virginia Clarke, vs. James B. Johnston, &c., Adam Norrie, executors, &c., of James Boorman, deceased. Answer . ,sol'r for d'f'ts, 74 Broadway, New York. Filed Sept. 14, '69.

58 Circuit court of the United States for the southern district of New York.

GEORGE AUGUSTUS CLARKE & JEANET VIRGINIA CLARKE, by their guardian, Reuben Middleton,
vs.
JAMES B. JOHNSTON & ADAM NORRIE, executors, &c., of James Boorman, deceased.
} In equity.

SOUTHERN DISTRICT OF NEW YORK,
State of New York, City & County of New York, ss:

MAX. GOEPP, being duly sworn, says:

1. I am the solicitor for the plaintiffs in this action. The bill was filed and subpœna issued on the 26th of April, 1869. The defendants entered their appearance on the 7th of June, 1869. After obtaining from me several extensions of their time to answer, they filed their answer on the 14th day of September, 1869. No replication has been filed, nor has there been hitherto any amendment of the bill nor application for leave to amend the same.

2. The action is for relief, on the ground of fraud, cognizable
59 in a court of chancery or equity only. The answer, amongst other defences, alleges that the claims of the plaintiffs are barred by the statute of limitations; that their deceased father, George Augustus D. Clarke, through whom they claim, and from whom their cause of action passed to them, as set forth in the bill, neglected and failed to commence an action on said cause of action for six years and upwards after the said cause of action accrued to him. The plaintiffs desire to meet this allegation with the reply that their said father did not discover the facts constituting the fraud in question during his life-time, and that, therefore, the said cause of action is not to be deemed to have accrued to him during his life-time at all. This present motion is made for leave to amend the bill by adding to it the said allegation,

(and also by correcting the statement in the bill as to the date of the birth of plaintiff's said father, erroneously stated in the original bill by mistake.)

3. The reasons why this motion was not made earlier are as follows:

60 At the time of the filing of the answer I was absent in Europe. I returned to New York on the 20th of October, 1869, but did not give immediate and special attention to the case, because I supposed that everything necessary to be done had been done by counsel associated with me, whose names do not appear upon the record as plaintiff's solicitors, for the reason that although they are attorneys & counsellors of the Supreme Court of the United States, they have not been admitted to the bar of this court. Those gentlemen, it now appears, had depended upon me in turn. The defendant's time to answer was voluntarily extended for more than two months, and they have not been prejudiced, to the best of my knowledge and belief, by the brief delay in making this application.

MAX. GOEPP.

Sworn to before me, December 13, 1869.
JOHN JEROLOMAN, JR.,
Notary Public City & County of New York.

61 (Endorsed:) U. S. circuit court for the southern district of New York. George Augustus Clarke and Jeanet Virginia Clarke, by their guardian, Reuben Middleton, vs. James B. Johnston & Adam Norrie, executors, &c., of James Boorman, deceased. Affidavit of Max. Goepp. Filed Dec'r 15, 1869.

62 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the 16th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the Honorable Samuel Blatchford, circuit judge.

GEORGE AUGUSTUS CLARK, & JEANET VIRGINIA Clarke, by their guardian, Reuben Middleton,
vs.
JAMES B. JOHNSTON AND ADAMS NORRIE, EXECUTORS, &c., of James Boorman, deceased.
} In equity.

On reading the original bill of the plaintiffs herein, filed April 26th, 1869, and the defendants' answer, filed September 14, 1869, and on reading and filing the affidavit of Max. Goepp herein, dated December 13th, 1869, on motion of Max. Goepp, solicitor for plaintiffs, it is ordered that the plaintiffs have leave to amend their said original bill herein by filing the amended bill herewith presented to this court, and endorsed, "filed by leave of court this 16th day of December, 1869," and that a copy of said amended bill be served on the solicitors for the defendants; and that the defendants have one month thereafter in which to file their answer to said amended bill.

SAM'L BLATCHFORD.

63 (Endorsed:) Circuit court of the United States for the southern district of New York. George Augustus Clark & Jeanet Virginia Clark, by their guardian, Reuben Middleton, vs. James B. John-

ston & Adam Norrie, ex'c'rs, &c., of James Boorman, dec'd. Order that plaintiffs have leave to file amendment to bill. Max. Goepp, solicitor for pl'ffs. Filed Dec'r 15, 1869.

64 Circuit court of the United States, southern dist. of N. Y.

G. A. CLARKE & AL. *vs.* BOORMAN'S EXECUTORS. } In equity.

To the honorable judges of the circuit court of the United States for the southern district of New York:

Your orator, George Augustus Clarke, and your oratrix, Jeanet Virginia Clarke, both infants, by Reuben Middleton, their guardian and next friend, having obtained leave to amend their original bill herein filed, come into court to amend the same as follows, viz, that in their said original bill they stated that their father was born in August or September, 1815, whereas the true date of his birth was the 2nd of November, 1815.

That whereas the defendants in their answer rely upon the statute of limitations, and charge that George Augustus D. Clarke, the father of your orator and oratrix, was under no disability since the death of his mother, Jeanet Clarke, which occurred on the 5th of September, 1847; that after the death of his said mother, he expressly ratified and approved all the acts and doings to his prejudice complained of in
65 the original bill; had acquiesced in them and ratified them, and was fully cognizant of them, and that he had at all times the means of ascertaining the condition of the estate of his grandfather, and prosecuting his rights in the same; and whereas, the aforesaid allegations of the defendants are utterly untrue, in every particular; and whereas the statute of limitations in a case of fraud, like the present one, only runs from the discovery of the fraud, your orator and oratrix aver that a knowledge of said fraud, sufficiently distinct, to prosecute the rights they have inherited, never was possessed by their said father, and was only obtained long after his death, and within a few and much less than six years, through the great exertions and pecuniary sacrifices of an able and partial friend.

Your orator and oratrix further show that Mathew St. Clair Clarke, consistently with the project he had formed, immediately after the death of James R. Smith, not only managed to have no inventory of the estate made and put on record, but studiously forbore from giving Jeanet Clarke, his sister-in-law, or George Augustus D. Clarke, her son, any information about the said estate; that, in order to have these persons under his incessant control, he took the said Jeanet Clarke, after
66 the death of her husband, in 1824, to his house, and kept her there until her death, in 1847; that, by an instrument of May 13, 1830, mentioned in the original bill, she charged the said Mathew St. Clair Clarke with the maintenance and education of her said son in case of her death; that the said Jeanet and Geo. A. D. Clarke never could or attempted to resist said Mathew St. Clair Clarke; that the only knowledge that the said George A. D. Clarke had was, that a will made by his grandfather was in existence, which contained a provision in favor of his grandchildren; but he never knew what this property was; that, on one occasion he said to his aunt, Ann Rhea, the wife of the said Mathew St. Clair Clarke, and the sister of the said Jeanet, that he intended to request said Mathew St. Clair Clarke to make a settlement, in order that

he might know if anything was coming to him or not, and then the said Ann Rhea, in great excitement, replied angrily, that if he did so, a bill would be run up against his mother for board, lodging, & carriage-hire, which would ruin her; and that as the mother of said George A. D. Clarke, stood in great awe of her said sister and sister's husband, was then very sickly and nervous, and entirely dependent upon the said Mathew St. Clair Clarke for her livlihood, the said George A. D. Clarke was deterred by their threats from pressing said Mathew St. Clair Clarke for information.

67 Your orator and oratrix further show that the feelings of their aforesaid father towards the said Mathew St. Clair Clarke, were a mixture of awe and affection, and having no knowledge that his uncle had injured him, he remained attached to him to the last, and nursed him during the illness of which he died in 1852, at Willard's Hotel, in Washington City.

Your orator and oratrix further aver that, in 1853, circumstances occurred which might have conducted their aforesaid father to a knowledge of his rights, if he had lived longer, and had possessed the means of pursuing this investigation; and these circumstances are as follows, viz:

In the spring of 1853, Major Richard Dalafield, of the Engineer Corps, then stationed at New York, intended to build a house in the city of New York, in 18th st., near 5th avenue. Before building, he employed James S. Huggins, a counsellor at law, whose office was then 58 Wall st., to examine the title. An abstract being made, said Huggins found that part of the lot was a portion of one of the lots apparantly sold by Robert Dixson to Anna Rhea, the wife of Mathew St. Clair Clarke, on the 26th of December, 1829, and tracing the title back to the will of James R. Smith, he probably conjectured that this lot was the

68 rightful property of the children of said Anna Rhea, the wife of Mathew St. Clair Clarke, the said Anna Rhea and her husband being then dead. The said Dalafield then enquiring for the heirs of Mrs. Mathew St. Clair Clarke, and ascertaining that one of them was married to Lieutenant Richard S. Smith, then stationed as assistant master of drawing, at West Point, wrote to the latter, on the 12th of April, 1853, informing him that he desired to perfect his title, and that he would give him information that might be of interest to him. This information was communicated to all the heirs of Mrs. Mathew St. Clair Clarke, to whom it was unexpected and welcome news; and, to manifest their gratitude for this information, they gave him a quit-claim to this lot, for the nominal consideration of ten dollars. The quit-claim deed of Ellen Maria Smith, Ann L. Franklin, and John G. Clarke, was executed on April and May 16, 1853, and was recorded in the office of the register of the city and county of New York, on October 20, 1862, in liber 858 of conveyances, p. 665; and the quit-claim deed of Edward St. Clair Clarke, the fourth child and heir of Mrs. Mathew St. Clair Clarke, was executed at San Francisco, California, on 30th June, 1863, and recorded in the office of said register, in liber 861, p. 408,

Your orator and oratrix further show that, after the said heirs of

69 Mrs. Mathew St. Clair Clarke had obtained the aforesaid information, one of them, Ann L., the wife of William B. Franklin, wrote a letter to her cousin, the said George A. D. Clarke, summarily stating that they had just learned that they had been defrauded of their rights under the will of their common grandfather, James R. Smith, and that they intended to bring suit for their recovery, and inviting him to join them, as he had probably been defrauded in the same manner.

Your orator and oratrix further show that when this information reached their aforesaid father, it shattered him greatly, and he avowed a determination to prosecute the matter, and he commenced a correspondence with a competent New York lawyer, requesting him to investigate the case, and commence the proceedings which might procure relief to him; but that the loose information he had received, was too imperfect to enable any one, without long research, to determine upon the course to be pursued, or to ascertain the nature and extent of the right of which he had been deprived.

Your orator and oratrix further show that their aforesaid father was then utterly without means, having been deprived of his legacy by the fraudulent acts of the said executors of James R. Smith; that he was compelled to solicit and accept a small and ill-paid em-
70 ployment as clerk in the Interior Department at Washington, which he kept until his death; that he and his family, composed of a wife and three small children, were entirely dependent upon his salary for a livelihood; that therefore it was impossible for him to leave Washington, and proceed to New York, where the search for every deed proceeding from the estate of said James R. Smith, among the thousand volumes of record in the register's office, would have consumed a great length of time; that the difficulty of procuring a sufficient insight into the history of the estate of said James R. Smith, is fully shown by the circumstance that the heirs of Mrs. Mathew St. Clair Clarke, persons in good position, and of a high order of intelligence, who were desirous of claiming their rights, were so long engaged in collecting facts and information, that when they instituted four suits in the court of the surrogate of the city and county of New York, so much time had elapsed, that they were non-suited upon the plea of the statute of limitations interposed by the said Boorman, they not being able to show the disabilities herein relied on by your orator and oratrix; and that unless this honorable court will admit the disabilities herein stated by your orator and oratrix as a sufficient reason for not bringing this action sooner, the crafty plan of the fraudu-
71 lent executors, inaugurated in 1817, and steadily pursued to the hour of their deaths to prevent enquiry, will be crowned with scandalous success; and that the aforesaid father of your orator and oratrix having in the meantime died on October 14, 1855, his rights herein discovered to your orator and oratrix.

Wherefore your orator and oratrix pray again for the relief prayed for in their original bill.

MAX. GOEPP,
Solicitor for Plaintiffs.

(Indorsed:) G. A. Clarke et al. vs. James Boormans' executors. Amended bill. Filed by leave of court this 16th day of December, 1869. Sam'l Blatchford. Filed Dec. 16, '69.

72 In the circuit court of the United States for the southern district of New York. In equity.

The joint and several answer of James B. Johnston and Adam Norrie, executors of the last will and testament of James Boorman, deceased, to the amended bill of complaint of George Augustus Clarke and Jeanet Virginia Clarke, complainants, against the said defendants.

These defendants, respectively, now and at all times hereafter, saving

and reserving to themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill contained, for answer thereto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, they severally say—

That they do not know and have no information, except by the said amended bill and the original bill in this suit, of the date of the birth of the said George Augustus D. Clarke, or as to whether he was born in the month of August, or of September, or of November, in the
73 year 1815, and they leave the plaintiffs to make such proof of their allegations in that behalf as they may be advised.

And as to all the other matters and things in the said amended bill of complaint alleged these defendants say that they have no further or other knowledge or information concerning the same, or any thereof, than they have in and by their former answer to the original bill of complaint in this suit stated and set forth; and they pray that their said answer to the said original bill may be taken and received as and for their answer to this the said amended bill of the said complainants; and that they may have the same benefit and advantage therefrom as if the matters of law pleaded and the matters of fact set forth in the said answer were herein again specifically pleaded and set forth.

All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct; and they humbly pray that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

KNOX & MASON,
Solicitors for Defendants.

JOHN W. MASON, *of Counsel.*

(Indorsed:) Circuit court of the United States, southern district of New York. In equity. George Augustus Clarke, Jeanet Virginia Clarke, vs. James B. Johnston & Adam Norrie, ex'rs, &c., of James Boorman, dec'd. Answer to amended bill. Knox & Mason, sol'rs for def'ts. Filed M'ch 16, '70.

74 To the hon. judges of the circuit court of the United States for the southern district of New York:

The replication of George Augustus Clarke and of Jeanet Virginia Clarke, by Reuben Middleton, their guardian and next friend, to the answer of Adam Norrie and James B. Johnston, executors of the last will and testament of James Boorman.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by these repliants: without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

HEWES, DENSON & PECK,
MAX. GOEPP,
Solicitor for Plaintiffs.

75 (Endorsed:) United States circuit court for the southern district of New York. George Augustus Clarke & Jeanet Virginia Clarke, ag'st Adam Norrie & James B. Johnston, exec'rs, &c. Replication. Max. Goepp, sol'r for pl'ff's. Filed M'ch 22, 1870.

76 Circuit court of the United States for the second circuit and southern district of New York.

G. A. CLARKE ET AL. *vs.* BOORMAN'S, EX'RS. } In equity.

Interrogatories to be propounded to John H. Kehler, at Denver City, in the Territory of Colorado, a witness examined on the part of the complainants:

1st interrogatory. What is your name, age, and profession, and present residence?

2nd int. What is your relationship to the minors, Geo. Augustus Clarke and Jeanet Virginia, who have instituted this suit to recover the legacy made to their late father, George Augustus D. Clarke, by his grandfather, James R. Smith, or its equivalent?

3rd interrogatory. Did you know the late Jeanet or Jeanette Clarke, the mother of said George Augustus D. Clarke, and did you know her husband, the late John X. Clarke?

4th interrogatory. Where and with whom did the said Jeanet Clarke go to reside, after she was left a widow?

5th interrogatory. Did you know the late Matthew St. Clair Clark, and what were his relations to the said Jeanet Clarke, and what was the nature of his business with her?

77 6th interrogatory. What was the degree of intelligence or capacity which the said Jeanet had for transacting the kind of business in which she was connected with the said Matthew St. Clair Clarke?

7th interrogatory. Did the said Jeanet Clarke attend to her interests in the estate of her father, James R. Smith, herself; or did she leave their management to others; and if so, to whom?

8th interrogatory. Had the said Jeanet Clarke great confidence in one man in connection with said business; and if so, who was that man; and did that man exercise great influence over her; and if so, how was it manifested?

9th interrogatory. Had the said Jeanet Clarke the intelligence and independence of liberating herself from that influence; and if not, why not?

10th interrogatory. Did you know the late George Augustus D. Clarke, the son of said Jeanet Clarke, and from what time to what time did you know him? Was your intercourse with him very intimate, or not?

11th interrogatory. During the entire course of your acquaintance with the said George Augustus D. Clarke, did you ever discover that he was entitled to any and to what property under the will of

78 James R. Smith, his grandfather, and had he ever the means of ascertaining said rights?

12th interrogatory. Was the said George Augustus D. Clarke dependant on and under the influence of particular persons; and if so, what persons; and had he the means of liberating himself from that influence?

13th interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination in question in this cause? If yea, set forth the same fully and at large in your answer.

MAX. GOEPP, *Solicitor for Pl'ffs.*
HUGHES, DENVER & PECK,
LOUIS JANIN & SON, *Of Counsel.*

(Endorsed:) U. S. circuit court. G. A. Clarke et al. vs. Boorman's ex'rs. Interrogatories to John H. Kehler, of Denver, Colorado. Max. Goepp, pl'ffs' sol'r. Filed May 9, 1870.

79 Circuit court of the U. S., southern district of N. Y., in equity.

GEORGE AUGUSTUS CLARKE & AL., *ag't*
JAMES B. JOHNSTON & AL., EXECUTOR, &C., of James Boorman, deceased.

On motion of Mr. John M. Mason, of counsel for the defendants, Mr. Louis Janin, of counsel for the plaintiffs, appearing and concurring hereto, it is ordered that the time for the parties to this suit to take and file their depositions and examinations of witnesses herein, be extended to the first day of August, one thousand eight hundred and seventy.

SAM'L BLATCHFORD.

JUNE 9, 1870.

(Endorsed:) U. S. circuit court, southern dist. of N. Y., in equity. George Augustus Clarke & al. vs. James B. Johnston & al., executors of James Boorman, deceased. Order extending time for examination. Knox & Mason, sol'rs for def'ts. Filed June 20, 1870.

80 Circuit court U. S., southern district of N. Y.

GEORGE A. D. CLARKE & AL.
vs.
JAMES B. JOHNSTON & AL., EXECUTORS, &C., of James Boorman, dec'd.

We consent that the depositions in this suit, now filed and hereafter to be filed in the office of clerk of the circuit court for the southern district of New York, be opened by the clerk of the said court.

Dated New York, Sept. 23d, 1870.

KNOX & MASON,
Sol'rs for Def'ts.
LOUIS JANIN,
MAX. GOEPP,
Sol. for Pl'ffs.

(Endorsed:) U. S. circuit court. George A. D. Clarke et al. against James B. Johnston et al. Consent to open commissions of file, &c. Filed Sept. 24, 1870.

81 (Duplicate).

In the circuit court of the United States for the southern district of New York.

G. A. CLARKE ET AL. *vs.* BOORMAN'S EX'RS. } In equity.

To Messrs. KNOX & MASON,
Attorneys & Counsellors at Law, New York City.

GENTLEMEN: Please take notice that, at the request of the plaintiffs in this case, on Wednesday, the 4th day of May, 1870, at 12 o'clock, m., I shall proceed to take the deposition of *of* W'm Syphax, A. S. H. White, Mrs. Maria Caldwell, A. Buckley, J. B. Stewart, sexton of Congressional burying-ground, Mrs. M. Virginia Quinn, M. J. Quinn, and Gen'l Richard Delafield, witnesses for the plaintiffs, at the office of Louis Janin, No. 612 14th st., n. w., in the city of Washington, District of Columbia.

FRED'K KOONES,
Notary Public, Washington, D. C.

(Endorsed:) Service admitted this 3d May, 1870. Knox & Mason, def't' sol'rs.

82 Deposition of witnesses, taken in an action pending in equity in the circuit court of the United States for the southern district of New York, wherein G. A. Clarke et al. are plaintiffs, and Boorman's executors are defendants, and for said plaintiffs, in pursuance of the notice hereto attached; Louis Janin & Son attorneys for the plaintiffs, and John M. Mason, firm of Knox & Mason, attorneys for the defendants, present.

M. VIRGINIA QUINN, of the county of Washington, in the District of Columbia, of lawful age, being first duly sworn by me as herein certified, deposes as follows, viz:

I am the mother of the plaintiffs. I do not remember when I first became acquainted with Mr. Clarke—Geo. Augustus D. Clarke. At Cumberland, Md., I was married to him, in the year 1844. He was a teller in the Mineral Bank, in Cumberland. After I was married I resided in Cumberland until 1851. My husband died on the 14th day of October, 1857. We moved from Cumberland to Washington City. Mr. Clarke was a clerk in the Interior Department. He first had a salary of one thousand dollars. It was afterwards increased to twelve or fourteen hundred; I don't know which. I desire to correct the date of my
83 husband's death to the year 1855. He was buried in the Congressional burying-ground. He left three children: Nannie T. Clarke, born April 18th, 1846; died in Denver, Colorado Territory, 5th of January, 1868; George Augustus Clarke, born 27th of September, 1851; Jeanet Virginia Clarke, 20th January, 1854. I think my husband was 28 years of age when I married him. His mother was named Jeanet Clarke. She was the daughter of James R. Smith. Her husband's name was John X. Clarke. When I married my husband his mother was a widow, and resided with Mathew St. Clair Clarke, at Washington. Mathew St. Clair Clarke was the brother of her late husband, and his wife was the sister of Jeanette Clarke. Mrs. Jeanet

Clarke resided with Mathew St. Clair Clarke from the time of the death of her husband until the time of her death, with the exception of visits she paid to Cumberland during the summer months. Mathew St. Clair Clarke visited Mrs. Jeanet Clarke at Cumberland very often. I saw him there very often. He visited at our house. I know what business Matthew St. Clair Clarke had with Mrs. Jeanet Clarke. He had charge of her entire business. He furnished her with money. Mrs.
84 Jeanet Clarke talked with my husband about the business very often. Mrs. Jeanet Clarke was exceedingly weak-minded—very childish—caused by sickness, I believe. Mr. Matthew St. Clair Clarke had great influence over her. When Matthew St. Clair Clarke proposed anything as to her property she never resisted. I have seen him oftentimes come in with papers, and ask her to sign them. He would say to her, "Here, Jeanet, I want you to sign this paper. You need not read it. It is all right. I am in a great hurry." My husband used to remonstrate with her, and it always ended in her crying and saying she could not do anything. If she did, Mr. Clarke would stop her support. Mr. Geo. Clarke never, to my knowledge, remonstrated with Mr. Mathew St. Clair Clarke as to his proceedings towards Mrs. Jeanet Clarke.

By Louis Janin, counsel for plaintiffs:

1st question. Would he have dared to do so?

(Question objected to by counsel for defendants.)

1st answer. (Taken subject to the objection.) No.

2d question. What feelings did Geo. A. D. Clarke entertain towards Mathew St. Clair Clarke?

(Question objected to by counsel for the defendants.)

2d answer. (Taken subject to the objection.) He had a great deal of respect and love for Mathew St. Clair Clarke, at the same time a great deal of fear of him.

85 3d question. Can you cite instances how that manifested itself?

(Question objected to by counsel for the defendant.)

3d answer. (Taken subject to objection.) After the death of his mother, I would urge him to see and talk with his uncle, to see if we could not have some settlement of his mother's estate, as we needed means very much. I thought it was very hard if there was any property that we could not get it. He would reply by telling me it was no use to talk to his Uncle Mathew about the business, that he would not allow him to talk to him. It happened very often. After Mrs. Jeanet Clarke's funeral, her personal property, consisting of her clothing and jewelry, bed and bedding were all distributed by Mrs. Mathew St. Clair Clarke to her poor relations, without even consulting my husband. I recollect when we were first married, it was in July, Mrs. Jeanet Clarke, at the solicitation of her son, asked Mrs. Mathew St. Clair Clarke to urge Mr. Mathew Clarke to have a settlement of their affairs, as she wished to give her son money to go into business. Mrs. Mathew Clarke was very much excited, and remarked to Mrs. Jeanet Clarke, if you do urge a settlement of your business, we will bring in a bill amounting
86 to thousands of dollars, for carriage-hire, servants, attention, physician's bill, and extras, which will ruin you and make you a beggar. Mrs. Jeanet Clarke then said she never would ask a settlement again, and I don't think she ever did; not to my knowledge.

4th question. Was your husband ever informed of this matter between his mother and his aunt?

4th answer. I don't remember. I don't think he was present when the conversation took place.

5th question. What do you know about the letter which, in the testimony of the witness Syphax, is said to have been received by Mr. Clarke between 1853 & 1855, half-way?

5th answer. In the winter of 1854, Mr. Clarke received a letter from Mrs. W'm B. Franklin or Mrs. Richard S. Smith, I am not positive which. I don't know where the letter is. It stated that they had been placed in possession of very valuable information. I don't remember what became of the letter, unless I gave it to Mr. Stewart. I saw it last in 1863 or 1864.

(Counsel for defendants objects to the stating of the contents of the letter until its loss is accounted for.)

6th question. What was the subject or matter of the letter?

(Counsel for the defendants objects to this question.)

6th answer. They had received a letter containing some valua-
87 information from General Delafield, concerning some valuable property in the city of New York, in which they wished him to join them in prosecuting the claim for the recovery of that property.

7th question. What was the effect which that letter produced upon Mr. Clarke?

(Question objected to by counsel for the defendants.)

7th answer. It excited him very much and made him very nervous—so much so that he visited the Fox girls about it—the spiritualists.

8th question. After that did he ever acquire any information showing what his rights were; to what property he was entitled; and what its value was?

8th answer. He did not.

9th question. Did he not communicate everything concerning his business matters?

9th answer. Yes, sir; fully and freely.

10th question. Did you or Mr. Clarke subsequently receive any information besides that letter during Mr. Clarke's life-time, giving additional information about his rights, alluded to in that letter?

10th answer. I did not—neither of us.

11th question. Did Mr. Clarke, after the reception of that letter visit New York?

11th answer. He did not.

12th question. Why did not he go?

(Question objected to by counsel for defendants.)

88 12th answer. He neither had money, nor could he take the time to go.

13th question. How was his time so much occupied?

13th answer. He was employed as a clerk in the Interior Department; in writing for members of Congress and other parties after office hours. He could not support his family on the salary he got. He was obliged to work after office hours.

14th question. Did he not go to Fortress Monroe for the benefit of his health?

14th answer. He went to Fortress Monroe for the benefit of his health and when he came back to Washington was paralyzed and speechless, and a week afterwards he died.

15th question. Did he not, in the latter part of his life, make any great efforts to borrow money to enable him to go to New York to investigate his affairs?

(Question objected to by counsel for defendants.)

15th answer. No, sir; he did not. It took all the means he had to supply his family with their daily wants, and his health was wretched

It was only between January, 1854, and October, 1855, that he had any knowledge of his rights, and they were very faint; and he was prostrated the most of that time by sickness.

16th question. Did your husband, as far as you know, ever see
89 the original or a copy of the will of his grandfather Smith?

16th answer. I know he did not, else he would have told me.

17th question. What did Mrs. Franklin tell you about the papers of her father after his death?

(Question objected to by counsel for the defendants.)

17th answer. She destroyed a great many relating to the Smith estate, thinking they would never be of any use.

18th question. Did not Matthew St. Clair Clark live in a lavish style before his death?

18th answer. I suppose he lived more luxuriously than any family in Washington while he lived. I went to his house as a bride, and visited there often.

19th question. He became very poor during the latter part of his life, did he not?

19th answer. Very poor.

20th question. Was your husband very much attached to him?

20th answer. Very much. My husband was with him when he died, at Willards' Hotel, and his own children were not.

M. VIRGINIA QUINN.

By mutual consent of the counsel for plaintiffs and defendants, the further examination of witnesses was adjourned until Saturday, May 7, 1870, to meet at same place at 12 o'clock m.

90 A. S. H. WHITE, of the county of Washington, in the District of Columbia, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows, viz:

I became acquainted with Mr. George A. D. Clark on or about the first of April, 1851, he having at about that time received an appointment as a clerk in the Department of the Interior, Secretary's office. I had been in there from the time of its organization, March, 1849. I saw Clarke frequently; but did not become so intimately associated with him until the spring of 1853, when the Department of the Interior took possession of a portion of the Patent-Office building. From that date I saw him more or less every day. On the first of July, 1853, I remember he received a promotion to fifteen hundred dollars. He was promoted again on the first of July, 1854, to sixteen hundred dollars, at which rate of compensation he was paid up and to the 14th day October, 1855, inclusive. He was quite an interesting man—eccentric at times. He was an excellent accountant. He was disbursing-clerk to the first of July, 1853. We used to talk upon various subjects.

Questions by Louis Janin, counsel for plaintiffs:

91 1st question. Please to state, during your intimate intercourse with George A. D. Clarke, if you heard him say that he was entitled to property; what its condition was, and what its value was.

(Question objected to by counsel for defendants.)

1st answer. (Taken subject to objection.) I heard him frequently say that he would, one of these days, be a very rich man if he lived; that he was entitled to inherit a vast estate, as he honestly believed; that he did not know the condition of the matter; but he was satisfied that the property was of inestimable value, and was located in New York City.

He said he had reason to believe that he was entitled to this property whatever it might be, through his mother.

2nd question. Was that property in possession of his mother?

2d answer. I think I never heard him mention this subject until after the spring of 1853. He said he was informing himself as to his rights.

3d question. Did he seem to be informed of any particular property of which he was entitled?

(Question objected to by counsel for defendants.

3d answer. (Taken subject to objection.) I never heard him mention with reference to the property, except to its locality, as I have before stated, being in New York City.

92 4th question. Did he tell you how he obtained that information?

(Question objected to by counsel for defendants.)

4th answer. (Taken subject to objection.) If he did, I cannot now remember where he got it. It was never mentioned to me by Mr. Clarke until after the Department of the Interior had taken possession of a portion of the Patent-Office building, in April, 1853.

Cross-examined by counsel for defendants:

1st question. What position did he first hold in the Interior Department?

1st answer. He was an assistant to the disbursing-clerk, at a salary of twelve hundred dollars, until the third of September, 1852, when he was appointed disbursing-clerk at a salary of $1,400, and continued disbursing-clerk to July 1, 1853. He was retained in the disbursing-clerk's room at at salary of fifteen hundred dollars. He was promoted on the first of July, 1854, to sixteen hundred dollars. His duties were all in relation to accounts alone. He had charge of all the accounts of the disbursements of the Department except the Patent-Office; issued all the requisitions upon the Secretary of the Interior for such disbursements. He was a capable man, efficient and industrious, and enjoyed the confidence of his superior officers to the fullest extent.

93 2d question. Did you ever hear him say how long he had known of his interest in the New York property of which you have just spoken?

2d answer. I did not. I never heard him mention the subject until after the removal of the Department of the Interior to the Patent-Office building.

A. S. H. WHITE.

WILLIAM SYPHAX, of Washington City, in the District of Columbia, of lawful age, being first duly sworn by me as hereinafter certified, deposes as follows:

I knew George A. D. Clarke, intimately, from March, 1851, to the day of his death. I was a messenger in the Interior Department during all that time, and for the room which he occupied, and am yet a messenger to the Secretary of the Interior. I was employed in March, 1851, and a few weeks after as a messenger to the disbursing-room which Mr. Clarke occupied, and was very familiar with him and his duties. To the best of my recollection we went to the present building in April, 1853, one month after General Pierce took his seat. I still continued messenger to that room and staid in the room with him until he died.

94 My duties were to carry the requisitions to the Treasury, and bring the money down, and go and pay all the sick and absent employees, and other parties who did not come in person, who

had claims against the Department. I was frequently at Mr. Clarke's house until he was taken sick on the first of October, 1855. Prior to his sickness he remarked to me, in speaking of his children, that he was entitled to some property in New York; that I think he said he heired from his mother's side.

Question by Louis Janin, counsel for pl'ffs:

1st question. State what you recollect of Clarke's statements to you concerning—first, the expectations he entertained; second, how he acquired the information; third, when he acquired it, and from whom; fourth, what he knew of the property—in what it consisted; fifth, why he had never enjoyed it before? sixth. whether he ever described the property, or knew what it was; seventh, what he intended to do with that property, and in whose possession it was.

(Questions objected to by counsel for defendants.)

1st answer. (Taken subject to objection.) Mr. Clarke stated he was entitled to some real estate in New York City which would be very, or was very valuable to his children. He received—he said he re-
95 ceived a communication from some one. I am not sure of the time. It was between the years 1853 and 1855 when he died, about half way. I am not able to say from whom. All I recollect is that he stated it was real estate in New York City, whether houses and lots I am not sure, but think it was in houses and lots. I don't remember hearing him say why he had never enjoyed it before. He said he would try to get the property, but he supposed there would be an effort to keep, or cheat him out of it, I don't remember the exact expression. I don't remember hearing him say in whose possession the property was.

2d question. Was not your intimacy with Mr. Clarke such, that if he had have known sooner of his expectations, he would have told you?

(Question objected to by the counsel for def'ts.)

2d answer. (Taken subject to objection.) I religiously believe if Mr. Clarke had known of it he would have told me, because I was trusted by him and in his confidence.

3d question. Did you not see him daily during his service in the Department?

3d answer. Yes, sir; my business was in the same room with him.

4th question. Did his pay support his family, or did he have to do other work?

(Objected to by the def'ts' counsel.)

96 4th answer. (Taken subject to objection.) I am not able to say about his pay, but I know he did other work.

5th question. Are you under the impression, and is it your recollection, that Clark spoke to you about his rights in New York immediately after he got that information?

5th answer. That is my impression.

6th question. After he had given the information, did Mr. Clark go to New York?

6th answer. I don't recollect.

Cross-examined by the counsel for the def'ts:

1st question. Was Mr. Clark punctual and constant in his attendance at the Deparment?

4th answer. As a general thing he was, He was regarded by the Department as an efficient clerk, and a very co'rteous gentleman. His

position was a responsible one. He had charge of large interests, as a disbursing-clerk of the Department, part of them. Mr. Clark prepared the requisitions for all the moneys paid by the Department of the Interior. I received the requisitions from Mr. Clark, and drew the money for the Department, and carried the money to Mr. Clark, and the disbursements were made by him.

WILLIAM SYPHAX.

Adjourned until Thursday, May 5, 1870, to meet at 11 o'clock
97 a. m., at same place, by consent and agreement of the counsel for the plaintiffs and defendants.

THURSDAY, *May* 5, 1870.

RICHARD DELAFIELD, of the county of Washington, in the district of Columbia, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows, viz:

1st question. Have you written a letter, dated 12 April, 1853, to Lieut. Richard Smith, assistant teacher of drawing at West Point Military Academy, a press copy of which is before you.

(Question objected to by counsel for defendants.)

1st answer. I did write such a letter.

2d question. What was the result of that letter?

(Question objected to by counsel for def'ts.)

2d answer. Mr. Smith came to New York, and had an interview with me. I gave him an abstract of title prepared for me by Mr. James S. Huggins, to a lot I purchased in 18th street, New York City, on which I was about to erect a building. And for the reason that I believed, from the perusal of the papers given to him, that he had an interest in a part of said lot, through his wife, the daughter of Mathew St. Clair Clark and his wife, and informed him, before putting up an expensive building on the entire lot, I would like to put at rest,
98 and beyond all doubt, any question as to the form of title through which it is derived, which I believed could be done by him, Smith, and his wife. In consideration of which I could put him in possession of old documents to show his interest in the part of said lot. Mr. Smith had no knowledge of any interest, at that time, that himself, & his wife, her sister and brothers, had in the part of the said lot, and other property bequeathed under the will of James R. Smith to Mrs. St. Clair Clarke, during her life-time. After this Smith and his wife, Gen'l W'm B. Franklin and his wife, John Clark and Edward Clark, children of Mathew St. Clair Clark, all personally known to me, gave me a deed, conveying all their right, title, and interest in and to the part of the lot in question. General Franklin, I believe, resides at, and has charge of the gun-factory, (formerly Colt's,) in Connecticut.

Cross-examined by counsel for the defendants:

1st question. How do you know that Lieut. Smith had no knowledge of his interest in the property before your *your* interview with him, or letter to him?

1st answer. I knew it from his statement to me to that effect.

RICH'D DELAFIELD.

99 JOSEPH B. STEWART, of the city of New York, in the State of New York, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows, viz:

I reside in the city of New York; attorney at law. I took a residence

in the city of New York in 1862, No. 64 West 22d street. My office was No. 34 Pine street. I am acquainted with Mrs. Quinn, late the widow of George Augustus D. Clarke; and had some acquaintance with him before his death.

(The deposition of this witness objected to for the reason that he resides in the district in which the venue is laid.)

1st question. Have you had occasion to make yourself acquainted with the affairs of the estate of a person by the name of James R. Smith, who died, in 1817, in the city of New York? If so, how?

1st answer. I did have occasion to investigate the estate and the mode of its settlement, which belonged to James R. Smith, who died in the city of New York, about the year 1817, perhaps in May or June of that year. The business matter which caused me to investigate the said estate, resulted from my being consulted and employed by a gentleman named Snow, residing then, and now, I believe, in the State of Illinois,
100 and to enable me to understand the object of that business, it was proper I should acquire a knowledge of the settlement of the estate of the said James R. Smith, which caused me to go to New York on that subject. I did then, say about the year 1861, or early in 1862, attempt an examination of that estate in the surrogate's office in the city of New York, where I supposed the proper information could be obtained, but on investigation I discovered such was not the case, and that, aside from the naked probate of the will, the records of surrogate's office afforded and imparted no information whatever, which caused me for the time to abandon the pursuit. It transpired, however, that, knowing personally John G. Clarke, one of the heirs of Mathew St. Clair Clarke, and also Gen'l Franklin, who married one of the daughters, I spoke to them on the subject and found that they could give me no information beyond the assertion that there was an immense property had been left and it was all gone, but in what way, they had no intelligent information whatever. Being impressed, however, with their positive statements for having once been so large an estate, and most of it real property, I determined at convenience to make a further in-
101 vestigation, and did so at a later period. I then went to Mr. Keyser, who was then register in the city of New York, and he advised me, after having himself looked over the records with me, and not being able to enlighten me as to the true meaning and relation of the multitude of conveyances, he advised me to employ a good practical searcher as a matter of economy and accuracy. I therefore did employ a gentleman whose name was J. Meach Henry, and then commenced a system of working under his advice, by taking the several conveyances in their dates and order, and preserving a narrative of the specified object of each one, and working them down gradually so as to keep up a proper relation between each conveyance, its object, and the powers in the will of James R. Smith, conferring upon his executors the power to make such a conveyance, which I did, and reduced it to writing, and which I afterwards printed, and refer to said printed document as part of my evidence, with my name written thereon, even date herewith. This occupied a great length of time, and I found that to disregard every piece of information given as such on the part of the heirs
102 of Mathew St. Clair Clarke, with whom alone, up to that period I had conversed. Having arrived at the information ultimately as set forth in the printed narrative herein above referred to, I found that to reach the objects proposed by Mr. Snow, would require the intervention of the heirs of said James R. Smith, and as I had promised the children of Mathew St. Clair Clarke to advise them of the result of my

investigation, I did so; and at the same time desired to know who and where the other heirs were. I then learned that the George A. D. Clarke whom I had known, was one of them; that he had died, leaving a wife and children. I made inquiry and ascertained, after a good deal of search, that they were living in a portion of the upper story of a building on 11th street, in the city of Washington. Upon finding them I learned that the widow had married a Mr. Quinn, and that the children, there being three of them, were living about among the family connexion of Mrs. Quinn. I made enquiry, close, searching, and particular as to any knowledge she had of her late husband's affairs, and could learn from her nothing whatever, not even a scrap of paper, containing memorandum or anything else; all that I could learn from Mrs. Quinn was that about the time her first husband died, he had got hold of such information as had determined him to commence legal proceedings, but that he died pending his proposed steps in that direction, and beyond that she had no information. This general statement covers the period down to a short time previous to the commencing of certain proceedings in the surrogate's court of the city of New York. This is the reason why I investigated the estate of James R. Smith, and the steps I adopted in doing so. The proceedings in the surrogate's court were in the names of the heirs of Mathew St. Clair Clarke.

103

(The foregoing testimony is taken subject to the objection of the counsel for the defendants.)

2d question. Can you recollect when you made Mrs. Quinn's acquaintance; and what she stated to have been the nature of the information which her husband possessed at the time of his death? If so, please state it.

(Question objected so by the counsel for the defendants.)

2d answer. I made the acquaintance of Mrs Quinn but a short time previous to the commencing of the proceedings of the surrogate's court in New York, which was, I think, in 1863. As to the information she had derived from her husband or from any other source about the estate of James R. Smith, or the rights of her first husband under his will, it was so indefinite as to amount to nothing more than the general statements; all derived from matters which were commencing to develop about the time of her first husband's death, and were not such as to aid me any at all in my investigation.

104

3rd question. Did Mrs. Quinn know anything beyond the existence of a will, and that the maker of the will was reputed to have died rich?

(Question objected to by the counsel for the defendants.)

3d answer. Mrs. Quinn seemed to know nothing of the will of James R. Smith or its provisions at the time I first spoke to her, except a general impression that there was a will, and was a large amount of property. The will itself, I have good reason to know and do believe, she never saw until I showed to her, and read a copy to her, because her statements about it, in our first interview, was so at variance to the true contents of the will, when I showed or read her the copy, which was certified in the surrogate's office, in the city of New York, that I became convinced that her information was very vague.

105

4th question. Did the searches and investigations, requisite to ascertain the legal rights of the heirs, under that will, necessarily require much time or not; and were they necessarily attended with expense?

4th answer. The searches and investigations necessary to arrive at the facts about and true condition of the estate of James R. Smith, as

it was in 1817, then again 1829, and then the period, when I was examining, was very laborious, protracted, and expensive. In addition to employing an experienced searcher and expert in handling and comparing the records, I also employed a surveyor, James E. Serrel, and commenced to show, so as to understand, the condition of the estate, under the will; the subdivision of it in 1827, 1828, and 1829; to fix the quantities al'ot'ed to each of the heirs, after the conveyances were made to meet the requirements of special bequests, made it necessary to make a survey and maps of the whole property; then to mark off such portions as *was* conveyed by the executors previous to 1829; then to fix upon the partition survey; then to trace the quantity that went
106 to each heir under the partition deeds of 15th Nov'r, 1829; then the general conveyance to one Dyson, on the 26th day of December, 1829, and his conveyance back to the three daughters of Smith and sons-in-law on the same day. I had maps made illustrating all these conditions of the property, and then brought them down to its present condition as improved and occupied, all which was necessary to be done with great particularity, so as to understand the condition of the estate of James R. Smith, as substantially set forth in the printed narrative hereinbefore referred to. In that matter I expended somewhere between nine and ten thousand dollars.

Cross-examined by the counsel for the defendants:

1st question. Give the full name of Mr. Snow, who first employed you in this matter, and his residence at that time, and at the present time?

1st answer. I cannot recollect distinctly his first name, tho' I have it in a voluminous correspondence somewhere among my papers. I think, however, at present, associate it with James or J. D. Snow. He then resided in the State of Illinois, perhaps at Jacksonville, or else at
107 Chicago, having removed from Jacksonville, and, so far as I know, if he is living, resides now at one or the other of the places named. He mostly wrote me from Chicago, but at the same time that did not seem to be his only place of residence in Illinois. In answer to that portion of the question which implies that Mr. Snow should have employed me, in the pending litigation, such is not the case. His employment of me, had reference to a wholly different object, and was in no wise designed for the benefit of the plaintiffs in this suit, nor for the benefit of any of the heirs of James R. Smith.

2d question. Was Mr. Snow personally or pecuniarily interested in the estate of James R. Smith, as heir or legatee, or did he represent any person having such interest?

2d answer. Knowing precisely Mr. Snow's position and interests in the premises, I can state accurately that he was not a legatee, and had no interest whatever, as heir or otherwise in the estate of James R. Smith. His object was to find means of fulfilling an agreement that he had entered into with the Secretary of the Treasury of the United States, to realize a debt or judgment to the amount of some hundred and
108 odd thousand dollars against Ex-Gov'r Joseph R. Duncan, of Illinois, as the security of somebody in one of the land-offices of the government in that district, and to do it, as he proposed, invol'ed a necessity of the knowledge of the estate of James R. Smith; and upon the information which I obtained in that investigation originated the proceedings on the part of the heirs of Mathew St. Clair Clarke.

General question. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of

this examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

General answer. Nothing occurs to me material to the matters about which I have been interrogated beyond what I have attempted to state.

JOSEPH B. STEWART.

SATURDAY, *May* 7, 1870.

Cross-examination of Mrs. M. Virginia Quinn:

1st question. What was Mr. Clarke's occupation when you first knew him?

1st answer. When I first knew him I don't know what his occupation was. Some three or four years before I was married I can
109 safely say he was a teller in the Mineral Bank, Cumberland, Md. He remained such teller until a very short time after we were married. I don't know how long. It could not have been a year. I think he received compensation as such teller, one thousand dollars. I am not positive. He then went with my brother, J. B. Kehler, as book-keeper and accountant, at Cumberland. I can't say how long he staid with him, probably a year or two. He staid with him until he closed his business. For probably a year or two he did nothing, his health being bad. He then came to Washington, and for a year or two was trying to obtain a situation in one of the Departments. While endeavoring to obtain that situation he had no business whatever. My father took care of myself and two children at Cumberland, and my brother furnished me with means to support him. He obtained the situation in the Interior Department in 1851. It was the first clerkship he had. I heard that his mother, Mrs. Jeanet Clarke, inherited property from her father, James R. Smith, from my earliest recollection. It seemed to be common rumor. It was understood in Cumberland that she was
110 wealthy. I think that the first time I ever heard Mr. Clarke say that his mother or grandfather had property in New York was in 1844, and was urging her to have a settlement with Mr. Mathew St. Clair Clarke. He never said anything to me about the character of the property as to whether it was personal or real estate. He never mentioned that Mr. Mathew Clarke had anything to do with the business except that he paid Mrs. Jeanet Clark money. The only reason why Mr. Geo. Clarke urged Mrs. Jeanet Clarke to have a settlement was because, as I understood, that Mr. Mathew Clarke gave her money. I was only between fifteen and sixteen years old, and did not know what an executor meant. I never knew that Boorman was an executor in the case until Mr. Janin was employed in the suit. I have positive knowledge that once in Washington, Mr. Clarke urged his mother to make this settlement. I am not positive that anything definite occurred after that. After my marriage I think Mrs. Jeanet Clarke made me two visits while in Cumberland, which visits lasted a very few weeks, excepting one she made in the winter months, which lasted a month or six weeks. My husband was at home when Mrs. Clarke visited there. I know that Mr. Mathew Clarke had charge of Mrs. Jeanet Clarke's business, only from the fact of his giving her money and constantly bringing her
111 papers to sign, and from common report. I know of instances of Mr. Mathew Clarke's bringing papers to Mrs. Clarke to sign in Cumberland. I was present at several interviews. I was not present at any interview in regard to signing any papers except at Cumberland. all at Mr. Clarke's house. Mr. George Clarke was not present at any of

those interviews. My father and mother were sometimes present at these interviews, and my brother who is now deceased. I don't remember that I told my husband that Mr. Mathew Clarke had had these interviews with Mrs. Jeanet Clarke, and that she had signed papers. He must have known that his mother did sign papers, as he remonstrated with her for signing them without reading them.

2d question. What do you mean by the expression in your direct examination that Mrs. Jeanet Clarke was exceedingly weak-minded and childish?

2d answer. To show that she was very childish, she used to keep dolls and dress them as she would a baby. She seemed to have a perfect mania for quilting quilts, and as soon as they were finished, having them all ripped out and quilted over by a seamstress. It used to annoy her very much for the servants to ask her to loan them her clothing.

112 She dressed very handsomely She used to shed tears and seemed very much distressed that I would allow them to annoy her in that way. From her general conduct I knew her to be very childish, and advantage was taken of it. I was married on the fifth of June, on Wednesday, and on the following Saturday I met Mrs. Jeanet Clarke at the house of Mrs. James Smith, in Newark, New Jersey, and almost before speaking to me, she asked the prospect of an heir or heiress, whatever it was. I don't remember how old Mrs. Jeanet Clarke was when she visited Cumberland. Mrs. Jeanet Clarke was not well supplied with money from the time of my marriage. She dressed very nicely, and with a great deal of taste. She did not suffer for want of money. The conversation with Mrs. Franklin, spoken of in the direct examination occurred a year or two after Mr. George Clarke's death.

Redirect examination, by counsel for the plaintiffs:

1st question. Were you present on that occasion, when Mrs. Jeanet Clarke requested her sister, Mrs. Mathew St. Clair Clarke, to urge her husband to a settlement, and Mrs. Mathew St. Clair Clark made a threatening answer, as stated in your direct examination?

1st answer. I was present.

113 2d question. You have stated that your husband sometimes remonstrated with his mother, for not obtaining a settlement from Mathew St. Clair Clarke. And what reason did she assign for not urging it?

2d answer. She said she was afraid of her support being stopped if she did; that Mr. Mathew Clarke always told her to keep quiet, and she should be taken care of.

3d question. Were you intimately acquainted with Mathew St. Clair Clarke?

3d answer. Yes, sir. I knew him very well, and loved him dearly.

4th question. What sort of a man was Mathew St. C. Clarke, that he exercised such influence over his sister-in-law and nephew?

4th answer. He was one of the kindest and best-hearted, affectionate men. He was a man of such superior mind. He was one of the most affable and pleasant gentleman. At the death of a little child that I had, about 22 or 23 months old, he held the child while it was dying. His kind and affectionate manner mitigated the distress in a great manner.

5th question. From whom was the information which is contained in the bill, and the amended bill? (Question objected to by the counsel for the defendants.)

5th answer. From Mr. Jos. B. Stewart.

114 Cross-examined by the counsel for the defendants:

1st question. When did the conversation between Mrs. Jeanet Clarke and Mrs. Mathew St. Clair Clarke occur and where?

1st answer. It occurred in the early part of July, 1844, at the residence of Mr. Mathew St. C. Clarke, in Washington. The two Mrs. Clarkes and myself were present; no one else that I remember. I don't think I ever mentioned the fact of that conversation to my husband.

M. VIRGINIA QUINN.

115 It is admitted that it appears, by the register at the Congressional burying-ground, that—

George A. D. Clarke was interred in the Congressional Cemetary, on the sixteenth day of October, 1855, in ground belonging to Mathew St. Clair Clarke, in site No. 115, R. 48.

Mathew St. Clair Clarke was interred in the Congressional Cemetary, on the seventh day of May, 1852, in site No. 114, range 49.

DISTRICT OF COLUMBIA,
County of Washington, ss.:

I, Frederick Koones, a notary public within and for the county of Washington, in the District of Columbia, do hereby certify that M. Virginia Quinn, A. S. H. White, William Syphax, Richard Delafield, and Joseph B. Stewart, were by me first duly sworn, to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions, by them respectively subscribed, were reduced to writing by me, and by said witnesses respectively subscribed in my presence, and were

116 taken at the place specified in the notice hereunto attached, on Wednesday, May 4, 1870, Thursday, May 5, 1870, and Saturday, May 7, 1870.

Witness my hand and notarial seal, this 7th day of May, A. D. 1870.

[L. S.] FRED'K KOONES,
Notary Public, Washington City, D. C.

(Endorsed:) Filed September 24, 1870.

117 *The estate of the late James R. Smith.—Narrative of facts, &c.*

1st. The late James R. Smith was a merchant in the city of New York. He accumulated a large fortune.

2d. Being taken suddenly ill, he, on the 23d January, 1817, made a will, "authorizing his executors therein named to sell in fee-simple or otherwise, in their discretion, at public or private sale, the whole or any part of his real and personal estate, and to execute good and sufficient conveyances for the same, and after paying debts and funeral charges, to distribute the residue according to the laws of the State of New York, as though he had happened to die intestate," unless the same or any part thereof should be otherwise disposed of by codicil or codicils to his said last will.

3d. He nominated as executors, Andrew Foster, James Boorman, John Thomson, his wife Hannah Smith, and Matthew St. Clair Clarke.

4th. On the 30th day of May, 1817, the testator made and published a codicil to his said will, in which he fully ratified his former will, "except so far as any part may or shall be revoked or altered by this codicil;" in which, in addition to former powers conferred, he authorized his executors "to lease his said estate, or any part thereof, except such as should otherwise be disposed of," &c.

5th. The testator then proceeds to make disposition of his estate, which extends through twelve consecutive items, and actually covers his whole property.

6th. In the second item he bequeaths to his wife certain real es-
118 tate in Newark, N. J., for life, with power and direction to will the same at her death to all or any one or more of their children —or with the consent of the executors to sell the same—and by will to dispose of the proceeds, the same as directed in reference to the realty from which such proceeds were derived. "But if she should not make a will in relation to said estate, or the funds derived therefrom, the same should descend to and belong to their children as tenants in common.

7th. In another clause in the second item, the testator "directed his executors to invest, as soon after his decease as conveniently may be, the sum of $25,000 in bonds secured by mortgage, of a particular kind mentioned, and to pay the interest and produce thereof to his widow during her natural life—and until that investment was made, he directed that his widow should be paid $1,500 per year.

8th. By another clause in the second item of this codicil, the testator willed $10,000, being part of this funded $25,000 to his widow, in lieu of all right of dower to the residue of his estate; which, at her death, she could will or dispose of absolutely to whomsoever she pleased.

9th. In the next items of this codicil, embracing consecutively the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th, the testator made sundry and various charitable and benevolent bequests, for the most of which he designated the particular part of the estate out of which the same were to be satisfied or created. In some of these items the funds to be provided were upon certain contingencies, and at certain times to revert and become part of his residuary estate and descended to his heirs-at-law—such is the case under items four, eight, and nine, in each of which the bequest was to revert to his estate when their special uses should cease.

10th. In and under the twelfth item of this codicil, the testator makes special provision for his four children—a son, James, and three daughters, Jeanet, Hannah, and Elizabeth. The language of this 12th item is: "All the rest and remainder of my estate of every kind and nature whatsoever and wheresoever situate, I give, devise, and bequeath unto my said executors, in trust, that the same shall be equally divided to and among my four children, share and share alike, and to their respective heirs. At this time the testator's two eldest children, who were
119 daughters, Jeanet and Hannah, were married, and both had children. He directed that his two younger children, James and Elizabeth, should each have the sum of $1,500 set apart for their education, and gave their guardianship and tuition to his wife. He directed that his "son James should not come to the full possession and enjoyment of his portion of the estate until he should arrive at the age of twenty-five years, nor should he have power to pawn, pledge, or mortgage, or dispose of the same, or any part thereof, before the expiration of that time; but should be entitled to receive the income arising from his portion between the years twenty-one and twenty-five." In relation to his three daughters, the language of the testator is: "I further direct that my daughters, Jeanet, Hannah, and Elizabeth, if she should arrive at the age of twenty-one years, shall have the privilege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of my estate herein devised to them, in such manner as they may think proper, and over which when so appropriated they shall have absolute control—and the remaining two-thirds of the portion or

shares of my daughters, shall be held separate and distinct, and not liable to the control, debts, or engagements of either of their husbands, which they now have or may hereafter have, as well they who are married as she who may hereafter marry; giving, however, to the husbands of either or all of them, in case the wife shall die first, either with or without issue, the income of said reserved portion of my estate, as long as (he) shall live, arising from his wife's portion, and after his death, then to the child or children of my said daughters," &c.

11th. The testator, James R. Smith, died a few days after the making of this last disposal of his estate, and the 11th day of June following its date, the will and codicil were duly probated in the surrogate's office for the county and city of New York, and letters-testamentary were granted to Hannah Smith, executrix, and to John Thomson and James Boorman, who took upon themselves the execution of the will. Andrew Foster, named in the will as an executor, is not mentioned in the letters-testamentary, nor did he, in any manner, renounce the trust to which he was nominated.

12th. On the 18th day of February, 1818, Mathew St. Clair
120 Clarke, named as an executor, also appeared before the surrogate and qualified as executor, and letters-testamentary were granted to him of that date. Though he was a non-resident executor, he gave no bond or security for the faithful performance of the duties and trusts he assumed.

13th. No inventory or schedule of the estates, real or personal, ever was filed or exhibited by the executors, or either of them, nor was any account ever filed or accounting had before the surrogate, or in his office, or any other proper tribunal. Nor were the executors ever released or discharged by the surrogate or the court of chancery, either as executors or as trustees. The records of the surrogate's office afford no other information about the estate of James R. Smith than the naked probate of the will; though the estate was very large, consisting of real and personal property in the city and State of New York, and in and about Newark, New Jersey, and elsewhere.

14th. The executrix Hannah, and the executors Boorman, Thomson, and Clarke, took charge of all this property, and two years later, to wit, in 1819, the executrix and widow, Hannah, became covert by a second marriage with Dr. John R. B. Rodgers, when her participation in the management of the estate ceased, and Boorman, Clarke, and Thomson had the control of it until the death of the latter, some time about the year 1828, when Boorman and Clarke continued as executors, neither of whom, as stated, ever filed an account or exhibited in the surrogate's office any information as to their proceedings.

15th. There being no account or inventory filed by the executors, the exact amount of the personal estate is not known; but there are certain data accessible, tending to show that it was considerable, consisting of debts due, bank stocks, money, and much personal property.

16th. The quantity of real estate which went into the hands of the executors is only ascertained by reference to the various sales and deeds executed by them. The quantity sold by them in the city previous to a general division made in 1829, which will be spoken of presently, was as follows:

121

Executors sold to	William Wallace, Feb'y, 1818	$11,000
"	to Peter P. Goelet, Feb'y, 1818	24,500
"	to James Thomson, March, 1818	100
"	" Feb'y, 1818	4,250

"	to W'm Colgate, Aug., 1823	20,000
"	to Betheil Bunker, Aug., 1825	2,000
"	to W'm A. Coit, Nov., 1825	100
Total about		$61,950

The amount of lands sold in the State is not exactly computed, but was very large, as may be discovered from the various articles of sale and memoranda notes upon the general surveys by the executors, and was, perhaps, equal to the amount sold in this city, which, taken with the supposed personalty, shows that assets largely exceeding $150,000 came to the hands of the executors previous to November, 1829, none of which is accounted for by the executors.

17th. In July, 1821, Hannah Rodgers made her will, and, as required by the will of her former husband, bequeathed the whole of the estate willed to her for life to her four children, in equal parts, excepting some personalty, including, also, $9,200 of the $10,000 given to her in lieu of dower, after the income on that amount being given to her last husband for life. She died in 1825, constituting Peter W. Radcliff and R. S. Robertson, of the city of New York, her executors. Her will was proven and probated in the city of New York, but was never probated in New Jersey, where the property was situated, nor was there ever any inventory filed, or account rendered by the executors of her estate, either as to the amount or disposition made of it. But looking at the gross amount placed at her disposal as provided by the will of James R. Smith, it would appear that there was $15,000 of the $25,000 annuity fund which she was required to bequeath to one or more of their children, and she did will equally to all, and which should have been about as follows:

Say cash	$15,000
Also, cash $9,200 of the $10,000 given in lieu of her dower, say	9,200
Total cash	$24,200

122 Besides this, all the real estate, including the old mansion at Newark, which was worth not less than 20 or 25,000 dollars in value; making, in all, an aggregate of some $45,000, which reverted and descended to James, Hannah, Jeanet, and Elizabeth, at the death of their mother in 1825. But as her executors, P. W. Radcliff and R. S. Robertson, exhibited neither inventory or accounts, and made no settlement before the surrogates in New Jersey, we have no exact information other than as before stated.

18th. In 1829, the then surviving executors of James R. Smith, to wit, James Boorman and Mathew St. Clair Clarke, took the first steps towards a final disposition of the remainder of the estate then in their hands—not by filing any inventory, or rendering an account of the large amount before disposed of, the whole proceeds of which had come into their hands; but by proceeding to make a valuation and division of the remainder among the four children.

19th. Soon after the death of Smith, Mathew St. Clair Clarke, by the consent of the other executors, was given sole charge of the real estate. He was assisted by P. W. Radcliff and Robert Dyson. Radcliff was the brother-in-law of Boorman, and Dyson was also a relative of Boorman and nephew of James R. Smith. These two gentlemen acted as agents

for the executors of Smith, from the year 1818 up to 1840, or so long as there was any portion of the estate of Smith left for them to handle. Their respective letters written to the executor Clarke, extending from 1819 up to 1840, in which they were constantly advising and urging sales of the realty, show this to be true.

20th. In November, 1829, nearly thirteen years after the death of Smith, and near five years after the death of Hannah Rodgers, the executors found it requisite to do something in the way of a settlement. The two estates, so to speak, of James R. Smith and his late widow, Hannah Rodgers, were now under a sort of mixed control, composed of Radcliff, executor of Hannah, and attorney for Clarke and Boorman; Dyson, who was agent for both estates; Clarke, an executor for one, and legatee under both; and Boorman, who was allied by marriage and blood to all, was executor of J. R. Smith. Elizabeth, the youngest child, and daughter of James R. Smith, was now of age, and
123 married to Joseph Duncan; and the son, James, had arrived at the age of twenty-five years, and was married, so that a division of the estate had to be made.

21st. Up to this date, say September, 1829, as stated, the executors had exhibited neither inventory or account of the testator's estate, either real, personal, or mixed, though it appears they had consumed and appropriated all the personalty, and a large portion of the realty. The Rev. John X. Clarke, brother of Mathew, and husband of Jeanet Smith, had died about the year 1827. On the 25th September, 1829, the executor, Mathew St. Clair Clarke, prepared a power of attorney, which was signed by his sister-in-law, Jeanet Clarke, whereby he was empowered to act for Jeanet in the proposed division of the estate, and also to settle with the executors of James R. Smith in her behalf—that is, to settle for her with himself—and also to settle with the executors of Hannah Rodgers, one of whom was P. W. Radcliff, his attorney, and attorney for the estate of J. R. Smith. Avoiding the surrogate's office, Clarke and Boorman, the surviving executors of Smith, with the aid of P. W. Radcliff, executor of Hannah Rodgers' estate, and attorney for Smith's executors, and Robert Dyson, who was the New York agent for both estates—these four parties put their wits together to close up Smith's estate. They had already closed up the testatrix Hannah's affairs in a way to suit themselves; not, it is true, by exhibiting or rendering inventory or account before the surrogate for Essex County, New Jersey, or ever probating the will of Hannah Rodgers there, as required by law, as stated; but simply probating the will in New York, whereby they recorded themselves (Radcliff and Robertson) as her executors; they next proceed to sell out and convey in rapid succession all the estate of said Hannah. It now only remained for them to get what was left of Smith's estate off of their hands, to close up this confused business, which they did as follows: They divided the remainder of the realty into four equal parts. This they were compelled to do in order to set apart to J. C. R. Smith his fourth part. It was very easy to do this, as the whole of the lands and lots owned by J. R. Smith were, at the time of his death, known by exact metes and bounds, which had been
124 further defined by more exact surveys by the executors previous to the year 1829—the period of which we now speak.

22d. The executors having arrived at a division of Smith's estate into four equal parts, next proceeded to set apart from the shares of the three daughters the one-third part of their respective fourths as the daughters were allowed by the will to take, and up to which time had not been done, though a period of near thirteen years from the death of

the testator. But before this division was made, the executors of the two estates—to wit, Radcliff on the part of the estate of the testatrix Hannah, and Boorman and Clarke on the part of the estate of the testator James—made what they called a settlement of accounts between the two estates on the first day of October, 1829. What was the substance or items of charge or credit in their account we are not informed; we can only see by the date of probate of the respective wills, that James had been dead since June, 1817—near thirteen years; so that no open account could in law be collected from his estate, nor could his estate contract debts after his death. And that Hannah died in 1825, near five years previous to this settlement, and her estate had all been willed to her four children, which included lands, moneys, and debts, if in reality there were any existing. Still, on the first day of October, 1829, the parties named settled the accounts, as they called it, "between the estates of Mrs. Hannah Rodgers, late Hannah Smith, and the estate of J. R. Smith; and the estate of the latter was declared indebted to the estate of the former in the sum of $14,642.20, as of the first day of the present month," (November 1st, 1829. From which language it would appear the accounts between these two "estates" were not then closed, but were still considered open, and accumulating.) And having arrived at this amount, as due from the "estate of James to the "estate" of Hannah, the executors of James proceed to have all the real estate of the latter appraised or valued by three appraisers, two of whom were Boorman, the executor of James, and Robert Dyson, the agent of both estates; and, as we will see presently, the future purchaser of all the residue of the daughters' interest, after carving off another portion, as will be stated.

125 23d. Of this debt of $14,462.20, so conceded by the executors to be due to the estate of Hannah, "as of the first day of November, 1829," they further found that, according to the will of Hannah, one-fourth part of this debt belonged to each of the four children, to wit, the sum of $3,663.05; and to pay which debt thus made due by the children to themselves, a certain portion of their real estate was set apart, and conveyed to themselves, by four several deeds, dated the 15th day of November, 1829. Thus a debt in open account asserted, and not proved, near 13 years old, and which, if ever a debt, was by the will of their mother donated to the children, was paid to themselves, by the sale and purchase by them of a portion of their own estate and just inheritance.

24th. But in this so-called settlement no mention is made of the fact that, at the death of Hannah, her estate was, and must be, indebted to the estate of James to the full sum of $15,000 for the reverting portion of the $25,000 funded or moneyed investment for her use for life, besides all the real estate which she must will to some one of her four children, and which by her will we have seen she did will to all in equal parts, including also $9,200 of the $10,000 given her in lieu of dower after a life-estate in her last husband, Dr. J. R. B. Rodgers. No mention is anywhere made in this settlement about the 45 or 50,000 dollars which ought to have come to these children from this source.

25th. In looking at these several conveyances, it will seem that the allotted portion of land was conveyed to each one of the heirs direct, except the part which was allotted to the executor Clarke, in which case it was conveyed to Robert Dyson, Clarke signing the deed, with Boorman as executor, and for himself personally, and as attorney in fact for his coheir, sister-in-law, and cestui que trust, Jeanet Clarke; and Robert Dyson, on the same day, hour, and moment, conveyed the same, as of purchase, back to the executor Clarke, for the same consid-

eration, to wit, $3,666.05, whereby he became the direct purchaser of that portion of his testator's real estate. All the deeds bear date the 15th November, 1829.

26th. The executors Boorman and Clarke, having now paid these four children the debts which they owed themselves, as the legatees
126 of their mother, next proceeded to set apart to the three daughters the $\frac{1}{3}$ of a $\frac{1}{4}$, which, by their father's will, they had a right to receive and expend as they pleased, when so set apart. In this subdivision and separation they follow the appraisement and valuation made by the executor Boorman and agent Dyson, and valued the $\frac{1}{3}$ of a $\frac{1}{4}$ of the daughter's portion of the real estate out of the city of New York at $6,929.15
And the portion in the city at 3,857.31

Thus making..... $10,786.46

the $\frac{1}{3}$ of a $\frac{1}{4}$ to which each daughter was entitled. In these several deeds the heirs all convey to each other direct, except the executor Clarke, who conveyed the part he was to receive to Robert Dyson, who, at the same time, conveyed it back to the executor, as of purchase, whereby he acquired a second part or portion of his testator's real estate. These deeds, four in number, like the four last-mentioned, all bear date on the 15th November, 1829, and were all acknowledged and recorded at the same hour and moment by the same parties. The executor Clarke signing for himself "and as attorney in fact for Jeanet Clarke," as before stated.

N. B.—A discrepancy appears in the consideration, as Dyson seems only to have paid $8,948.68 to Clarke, while by a memorandum endorsed on the deed, Clarke appears to have paid Dyson, at the same moment, for the same lots of land, $10,828.28. (See memorandum on the deed.)

26th. The conveyancing of the real estate under the partition was now so far completed as that a fraction had been conveyed to pay the pretended debt to Hannah Rodgers' estate; a further part had been carved off and conveyed as the $\frac{1}{3}$ of a $\frac{1}{4}$, and in order to do this the whole estate had been parted and valued into four equal parts, as disclosed and so recorded in the eight or nine several deeds just spoken of. This being done, and supposing it to be done properly, and the debts as declared in these same deeds all being paid, the power of the executors, who were clothed with a trust to divide the estate among the four children, was exhausted; and what was remaining of the testator's estate, real or personal, was, by his will, to be enjoyed by his daughters
127 and their husbands, respectively, during their natural lives, and then vested in the children of his daughters, who took the remainder in fee.

But, by a deed dated the 26th day of December, 1829, the executors Boorman and Clarke, joining with themselves their cestu que trusts, the three daughters, conveyed all that was left of the real estate of J. R. Smith to Robert Dyson, for the stated consideration of $64,710.59, and the same moment this conveyance was made Robert Dyson conveyed back the whole property in three equal parts, by separate deeds, for the same consideration, divided as follows:

The executor Clarke purported to pay $21,614.56
Jeanet Clarke..... 21,573.13
Elizabeth Duncan and Jos. Duncan, her husband..... 21,522.90

Making..... $64,710.59

the precise consideration which Robert Dyson pretended to have paid for the same property on the same day. These deeds were all acknowledged at the same time and recorded on the same day, at the same hour and minute, by the same party.

N. B.—It will be observed in the wholesale deed to Dyson that the executor Clarke purports to have received the wholesale purchase-money, that is, the $64,710.59 paid by Dyson, Boorman receiving no part of it, "the receipt whereof the said Mathew doth hereby solely acknowledge, before ensealing and delivery of these presents."

27th. By these last conveyances the whole remainder of the estate left by James R. Smith to his grandchildren was swept away. The whole was in a few years conveyed by the husband' of the three daughters, (with occasional aid of the executors,) in fee to various purchasers. The cause of action indicated by the foregoing statement is, that the children of the three daughters of James R. Smith claim that two-thirds of three-fourths of all the lands of which James R. Smith died seized, vested in them, by the terms and conditions of his will.

128 The matters and facts relied on by the heirs of Smith may be stated thus:

1st. That the clause in the will executed 23d January, 1817, which reads, "Second, I do hereby authorize my executors hereinafter named and appointed," &c., "in their discretion, to sell in fee-simple or otherwise," &c., at public auction or private sale, the whole or any part of my estate, real or personal, &c.; and the part under the "third" clause, which after payment of debts, funeral expenses, &c., "to be distributed according to the laws of the State of New York, in the same manner as in case I had happened to die intestate," conferred, and only conferred a naked authority or power to sell, pay debts, and distribute proceeds, but vested no fee or estate in the executors, who are not named in the empowering clause. The whole estate, as well as the proceeds derived from it, if sold under this will, vested in the heirs-at-law, according to the statutes of New York. But was all subject to the restrictions in the said "third" clause, "unless the same or any part thereof shall be otherwise disposed of by codicil or codicils to this my last will and testament." This reservation of future disposal of the whole or "any part" of the estate applies to and governs the whole empowering clause. The will was evidently made, as stated by the testator, when "weak in body," and but imperfectly expressed his real wishes, as is shown by the reservation to alter in whole or in part, by "codicil or codicils."

2d. The codicil making final disposition of the whole estate, executed on the 30th May, 1817, does make material alterations. The testator confirms his said will in all respects, except so far as any part thereof may or shall be revoked or altered, and in addition to the powers (no fee or estate vested) granted to my said executors in relation to my said estate. I do hereby authorize them to lease the said estate or any part thereof, except such as shall otherwise be disposed of, in their discretion, as they shall find the situation of my affairs requires." The testator here adds the powers to lease to the former power of sale; but limits both as to their extent of their exercise and the subject matter to which they shall be applied. That is, where the testator should "other-
129 wise dispose of," (see line 15, will,) or should "revoke or alter," (see line 28, codicil,) or "except such as should be otherwise disposed of," (see lines 30–31, codicil,) when and wherever this should appear in the "codicil or codicils," the power of sale or lease was silenced, and that part or portion of the estate descended and vested according

to the intent and direction of the testator, as expressed in the particular case.

As it appears the testator meant to and did make a series of benevolent and charitable donations, some of which were in kind, others in money; some to vest in fee in the legatees, and pass out of his estate, and some to revert to his estate and heirs when the designated uses or life-estates should terminate as specified, it would be requisite to make many sales or leases to create the requisite funds—such as the $25,000 to be invested for the use of his widow, Hannah Smith; the $10,000 in lieu of dower, (see lines 47 to 61, codicil;) in item fourth of codicil, lands to be sold and proceeds invested for "the maintenance and education of poor and pious youth in the Theological Seminary of New York," (see lines 68 to 80;) in item fifth, to sell lands and invest proceeds in the purchase of a share of the City Dispensary for the pious poor, &c., "to be called the Lord's fund for his poor people," (see lines 82 to 93;) also, in the eighth item, to invest $800 "in the like securities," and pay the income to Nancy Smith, the widow of his brother, Dunbar Smith, and after her death to revert, (see lines 114 to 118;) also, in ninth item, a sum sufficient to raise an annuity of $100 per year, to be invested "in like securities," which is to be paid "every year to his sister Margaret," (see lines 123 to 127;) in item tenth, $500 in money is to be paid to his nephew, George, and $1,000 to his nephew, Robert Dyson." These sums of money, with the $1,500 each, $3,000 in all, to be provided for the education of his son James and daughter Elizabeth, (see lines 140 to 144,) might require the sale or lease of part of the lands, and hence to that general extent the power of sale was granted to the executors, subject, however, always to any other disposition that might or should be made in the codicil.

3d. In the twelfth item of the codicil, which supposes all the preceding bequests and devises to be provided for, whether by convey-
130 ance, sale, or lease, the testator drops the word "sell" or "lease," and says: "All the rest and residue of my estate, of every kind and nature whatsoever, and wheresoever situate, I give, devise, and bequeath unto my said executors in trust, (not to sell or be sold,) but that the same shall be equally divided to and among my four children, share and share alike, and to their respective heirs." This gave no power of sale or estate to be sold. It only gave and did give power to divide what remained (after the preceding eleven items were fulfilled) among the children in four equal parts, and created the executors trustees for the special purpose, which is the first and only special trust with which the executors were clothed in the whole will. In all the other items of the will where sales were to be made and the money invested, the testator directs how it shall be invested, "in like securities," as described in lines 48, 49, 50, 51, 52, 53, and it is not possible the testator would be less careful when providing an inheritance for his children. It is not money or stocks that are to be so divided; it is "all the rest, residue, and remainder" of the testator's "estate" that is to be divided after the several other things specified should be done. The language is conclusive, and directs a plain and simple duty.

The testator provides for the education of his two infant children. He gives their guardianship and tuition to his wife, their mother and natural guardian. He is also careful to provide that his "son, James, should not come to the full possession and enjoyment of his portion of my estate until he shall arrive at the age of 25 years; nor shall he have power to pawn, pledge, mortgage, or dispose of it in any way, the same or any part thereof," before the expiration of that time, but shall be en-

titled to receive the income arising from his portion between the years of twenty-one and twenty-five." What was it the testator said his son should not "pawn, pledge, mortgage, or dispose of," &c.? Certainly not money, to be guarded from such use; and we have seen there was no direction about any kind of stocks or like securities. It was his real estate that should not be mortgaged, and no other reasonable meaning can be implied. But the testator, when providing for his three daughters, still further relieves his meaning of any doubt. He says, "I
131 further direct that my daughters, Jeanet, Hannah, and Elizabeth, if she should arrive at the age of 21 years, shall have the privilege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of my estate devised to them (the daughters, and not their husbands or executors) in such manner as they may think proper, and over which, when so appropriated, they (the daughters) shall have absolute control; and the remaining two-thirds of the share or portions of my daughters shall be held (not sold) separate and distinct, and not liable to the control, debts, or engagements of either of their husbands which they now have, or may hereafter have, as well those who are married as she who may hereafter marry, (excluding the control, debts, engagements of present and future husbands,) giving, however, to the husbands of either and all of them, in case the wife shall die first, either with or without issue, the income of said reserved portion of my estate, as long as he shall live, arising from his wife's portion; and after his death, then to the child or children of my said daughter so dying," &c. The language of the testator is not potential, but imperative; does not say may, but must. He "directs" that his daughters may each enjoy the $\frac{1}{3}$ of a $\frac{1}{4}$. He directs that $\frac{2}{3}$ of each $\frac{1}{4}$ willed to his daughters be "held" separate and distinct. He directs that it shall not be liable to the control, debts, or engagements of their husbands. He "directs" that the husbands may have the income of "the reserved" of his estate during their life; and after the death of the daughter and her husband, the testator "directs" that the reserved portion shall go to the child or children of his said daughters. What $\frac{1}{3}$ of a $\frac{1}{4}$ was to be set apart and appropriated by his daughters; and what "estate" was "to be held separate and distinct;" and what was the "reserved" portion of the testator's estate? Was it money? Was it proceeds of sales to be made by the executors? They were only made trustees to divide an existing thing, and were not authorized to sell the existing thing and divide its future proceeds.

It is clear that this twelfth item of the will, wherever the testator provided for his offspring, was one of the clear and unequivocal revocations, "alterations," or other dispositions of a part of his estate which totally excluded all power of sale on the part of the executors, in
132 whom no fee or estate was vested, other than a naked power and trust to divide the fee-simple of all the remainder which vested directly in the children of the three daughters born, and as fast as born, to take effect, so soon as the daughters and their husbands should die.

4th. The executors filed no inventory, and rendered no account, nor did they have the estate appraised by two appraisers, as authorized and required by law. In October, 1829, after the lapse of near thirteen years, they appraised the real estate in which Boorman, one of the executors, and Dyson, the agent and future purchaser, were two of the appraisers.

5th. There was no setting apart the one-third of a one-fourth within the meaning and intent of the will, and no "holding" separate and distinct "the remaining two-thirds of the daughters' portion."

6th. The conveyance of a portion of the estate to the children to pay the pretended $14,620 debt, was a fraud upon its face—no such debt existed against the testator's "estate" in favor of his wife's "estate," at the time of his death; and none could be created afterwards—nor could any such debt be legally due after a lapse of thirteen years. Hannah Rogers willed the whole of her estate to her four children, which included this debt, if ever it existed, and the conveyances of the 15th of November, 1829, by the executors, for the pretended payment of it, was a mere trick and scheme to invest the husbands with that much of the daughters' and grandchildren's inheritance, contrary to the testator's will.

7th. The several conveyances of the 15th November, 1829, which recite that the executor Boorman and agent Dyson were two of the appraisers, was notice to all subsequent purchasers.

8th. When the executors had appraised and fully divided the whole of the estate, on the 15th of November, 1829, they had discharged their trust, and their powers for sale, or any other purpose affecting the fee-simple of the estate, ceased, and the subsequent sale to Robert Dyson, on the 26th of December, 1829, was null and void. Besides this,
133 the executors never divided, or even pretended to divide, any of the proceeds between heirs after the sale to Dyson, supposing they had a right to make such sale.

9th. The conveyances to Dyson, of 26 November, 1829, for $64,710.59, pretended to have been paid to the executor Clarke, and conveyance back to the heirs, in three equal parts, on the same day, for the same consideration, was a pretence, and passed no title.

10th. All purchases, or sales and conveyances, made to effect purchases on the part of the executor Clarke, were null and void.

11th. All purchasers and parties acquiring title under any of the deeds of the 15th November, or 26th December, 1829, were thereby notified of all the trusts under the will of James R. Smith and Hannah Rodgers, and of the extent and right of the executors and the daughters and their husbands to sell said estate.

As a fact and evidence of fraud and imposition on the heirs, in the appraisement made by the executor Boorman and the purchaser Dyson, in the conveyance of the 26th December, 1829, it is seen that they appraised the whole city property belonging to the daughter, at about $34,715.39, when, only about five years later, a portion of that allotted to one of the daughters, Jeanet, sold for $33,000 cash, lacking but a trifle of being as much as the whole city estate was appraised for.

12th. The will was of record, and all the deeds refer to it as the authority of the executors, or husbands and daughters, to convey.

13th. All the acts of the executors were in open disregard of the requirements of the statutes of New York. No inventory, no appraisement, no report, or schedule of the debts or assets to the surrogate, or leave obtained to sell real estate to pay debts, or proof of the debts to be paid. No bond was given by Clarke, who was a non-resident executor. As the executors acted without the order or advice of the surrogate, it was imperative in the purchasers to see that all legal and technical forms were observed.

134 *Special matters and facts which apply to the heirs of Hannah and Jeanet.*

We have seen in the deed to Dyson, of the 20th Dec'r, 1827, that Boorman purports to have received no part of the $64,710.29 which

Dyson was alleged to have paid, but that it was all paid to the executor Clark. We have also seen that Dyson at the same time purports to have sold it back for the same consideration, divided into three parts, the deeds all being acknowledged and recorded on the same day, by the same party. It is therefore obvious that it was in fact a mere sale and purchase per interpositam personam, through Dyson, on the part of the executor Clarke. Such being the case, it affects the whole sale, rendering it void, as being a device on the part of the executors to vest the fee-simple of the property, or a part of it, in the executor Clarke. The legal taint extends to the whole sale as much as if Clarke had purchased the whole property so conveyed to Dyson, whilst holding the position of executor and trustee.

This defect, like the appraisement made by executor Boorman and agent Dyson, applies to all the parties.

But to the children of Hannah it is especially important, as it renders void the sale and purchase of their portion of the estate by the executor. This is likewise the case with the purchase by Clarke of the portion of Hannah's property pretended to be sold for the payment of her portion of the $14,620 debt due to her deceased mother; also, the sale and purchase, by the executor Clarke, of her $\frac{1}{4}$ of the $\frac{1}{4}$ willed to her. Were there no other questions arising under the will, these purchases by the executors would render the sales void.

We have also seen that, on the 25th December, 1829, the exe-
135 cutor Clark obtained from his sister-in-law and "cestui que trust," Jeanet, a power of attorney to settle with the other heirs and the executors (himself one of them) for her. This power was executed in Pennsylvania, applying to property and estate in New York and New Jersey, but was only used in Washington City, where it never was recorded, and had no legal or judicial existence. By the laws in force in the District of Columbia, a deed cannot be executed and acknowledged under a power of attorney.

But, on the 13th of May, 1830, the executor Clark, caused his cestui qui trust, Jeanet, to convey to him, as of purchase, the whole of her estate as of purchase, as follows:

"This indenture, made this thirteenth day of May, anno Domini one thousand eight hundred and thirty, between Jeanet Clarke, widow, late of Greencastle, Pennsylvania, and now of Washington City, of the first part, and Mathew St. Clair Clarke, of said city, of the other part, witnesseth: That, for divers good and valuable considerations, as well as the sum of one dollar in hand paid to said Jeanet by said Mathew, before the delivery of these presents, and also to re-imburse said Mathew the sum of two thousand two hundred and forty-one dollars and six cents, with interest from the first day of October last, the said Jeanet hath granted, bargained, and sold, aliened, enfeoffed, confirmed, assigned, and transferred, and by these presents doth grant, bargain, and sell, alien, enfeoff, confirm, assign, and transfer to him, the said Mathew, his heirs and assigns, all and every part of the estate of her, the said Jeanet, whether real, personal, or mixed, arising out of the estate of her late father, James R Smith, or her mother, late Hannah Rodgers, both deceased, wherever the same may be, and in whatsoever manner holden or claimed, and whether reduced into possession or not; all which estate will fully appear by the settlement of the heirs of said James R. Smith, deceased, and Hannah Rodgers, made in October last: To have and to hold the same, and every part and parcel thereof, to him, the said Mathew, his heirs and assigns, forever. In trust, nevertheless, to and for the following uses, intents and purposes, and for no other, to wit, to sell and dispose of the same, or any part thereof, as he, the said Mathew, may think fit, and in his own name as trustee, or my name, as he may

136 choose, to make conveyances, releases, and acquittances therefor, including general warranty-deeds, or to rent and lease the same, or any part, and to collect any monies due or becoming due, and to make deeds for lands sold previous to this date, and to do all other acts necessary for the entire control, management, and disposal of said estate, as I myself could do; and upon this further trust, that he may pay himself the above-mentioned sum of two thousand two hundred and forty-one dollars and six cents, with interest as aforesaid, either in money or by part of the real estate in the city of New York, conveyed to me as part of my mother's estate, or out of the one-third part of my father's estate, conveyed to me by his executors, taking the same at the valuation made before the division of said estate. And also, that the proceeds of the sales of the whole of the remainder he will appropriate as I shall direct during my life-time; and in case of my death, leaving my son, George Augustus, living, under the age of twenty-one years, that then the proceeds, (not confining himself merely to the income or interest where it is in his opinion necessary) or so much as he shall think proper, he shall expend on him, the said George Augustus, in his maintenance and education; and in case the said George Augustus should die before he arrives at the age of twenty-one years, and without lawful issue living at his death, then the whole of the estate remaining, which is held by me for one-third of my father's estate, and that held by me by the division of my mother's estate shall, whether held real estate or in monies raised therefrom, shall be held in trust by him, the said Matthew, for the use and benefit of my sister Anna Rhea Clarke, his wife, and her children, with powers of sale and appropriation as she may direct. And upon this further trust, that upon the like contingencies respecting me, the said Jeanet, and said George Augustus, as above mentioned, then the whole of the two-thirds of my estate, as designated in the said division, and conveyed to me by deed from Robert Dyson, as remains undisposed of, shall be disposed of by said Mathew, according to the terms of the will of my father, James R. Smith, said Mathew not to be held responsible for any part or portion of said two-thirds, but such as shall remain in his hands on the death of said George Augustus, without issue as aforesaid; said Jeanet, how-
137 ever, retaining the power nevertheless by deed to alter and change said last-mentioned trust of the remainder of said two-thirds unexpended. And, further, that for his care, trouble, and expenses said Mathew shall and may retain a reasonable compensation, if he pleases so to do.

"Witness my hand and seal.

"JEANET her + mark. CLARKE. [L. S.]

"Signed, sealed, and delivered in the presence of (the mark being made instead of the signature, in consequence of previous disease)—

"ANNA M. CALDWELL.

"T. HAETER CRAWFORD.

"The interlineation named in the acknowledgment first being made.

"NOAH FLETCHER."

"WASHINGTON COUNTY,

"*District of Columbia, ss:*

"Be it remembered that, on this twenty-first day of July, one thousand eight hundred and thirty, before me, William Cranch, chief judge

of the circuit court of the United States for said district, personally came Jeanet Clarke, the grantor in the aforegoing deed, to me personally known as such, and did acknowledge the same to be her act and deed, and that the same was retained in her possession until the thirteenth day of the present month, when the same, after making divers deeds on and before that day, was duly delivered; the interlineation of the words "of the sales" being first made, and also the words "or my name, as he may choose," and the words "including general warranty-deeds.

"W. CRANCH.

"Recorded the preceding at the request of Robert Dyson, this 2d of October, 1830, at 23 min. past 11 a. m.

"JAMESON COX, *Register.*

"N. B.—There was no seal attached to this deed opposite the name of Jeanet Clarke.

"OFFICE OF THE REGISTER OF DEEDS, &c.,
"*City and County of New York, ss:*

"I have compared the annexed copy with an instrument recorded in this office, on the 2d day of October, A. D. 1830, at 11 o'clock 23
138 min. a. m., in liber 266 of conveyances, page 327, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

"Dated this 29th day of April, 1863.

"JOHN KEYSER, *Register.*"

It will be seen that this deed is a sort of multifarious and mixed instrument, viz: It is a deed, a power of attorney, a trust, and species of appointment, or bequest, to take effect after the death of certain parties. It imposes no particular burden on the "said Mathew," and only requires him to account for such as he may have left in his hands after the death of Jeanet's then infant son, George A. D. Clarke, and that, too, "at the valuation made before the division of said estate." So that it is quite obvious the property could never appreciate in value for the benefit of Jeanet or her child.

The consideration for this deed was "divers good and valuable considerations," as well as the sum of one dollar in hand paid. And also, to re-imburse said Mathew the sum two thousand two hundred and forty-one dollars and six cents, with interest from the first day of October last, &c.

On the 13th day of July, 1830, Jeanet conveyed to the executor Clarke, for the consideration of $2,346.73, a certain portion of her real estate, which was the same debt which formed the moneyed consideration of the deed of the 13th of May preceding, both deeds being delivered at the same time, which really deprived the deed of the 13th May of all consideration whatever.

All these deeds to and purchases by the executor Clarke were null and void, and passed no title whatever, for the reason that the grantee was still the executor of James R. Smith, and the trustee of the grantors. These deeds all of them bear fraud upon their face, and were notice to all subsequent purchasers.

The deed of the 13th May, 1830, had no seal, and has the mark (X) of Jeanet Clarke instead of her signature, though it is known she was

an educated lady. It was obtained from her when she was in
139 extreme ill health. Both it and the deed of the 13th July, 1830, were acknowledged at the same time, to wit, the 21st July, 1830.

The executors must account for the whole estate, real and personal, which came into their hands. This will embrace—

1st. Personal property.

2d. Proceeds of real estate sold previous to the partition in 1829.

3d. Several lapsed or reverting legacies.

4th. For permitting lands to be sold for taxes.

The following is the schedule of James R. Smith's estate, as made out by himself just previous to his death, in June, 1817:

Real and personal assets of the estate of James R. Smith.

STOCKS.

57 New York Insurance shares, at 50 doll's each, at par, is		$2,850 00
9 Mutual Insurance shares, at 50 doll's each, at 10 per cent., is		495 00
27 Merchants' Bank shares, at 50 doll's each, at 5 per cent		1,417 50
9 Manhattan Bank shares, at 50 doll's each, at 5 per cent		472 50
34 Union Bank shares, at 50 doll's each, at 90 per cent		1,530 00
300 Ocean Insurance shares, at 70 per cent., 35 doll's each		10,500 00
1,270 dollars six per cents, at 80 per cent		1,016 00
3 United do.	at 50 doll's each, nominal	150 00
12 commercial do.	at 250 doll's each, nominal	3,000 00

140 PERSONAL PROPERTY.

Ship Factor, valued at 12,000 dolls., but say		$10,000 00
⅔ Brig Fairy, do. 8,000 do. do.		6,000 00
$8,000 cost $7,000		
The Brig Ann, also half her cargo and freight, if received, 15,000 dollars, but say		12,000 00
Bond and mortgage, Rev. James Laurie Washington. Charles B. Caldwell has this.		
Bonds and mortgages from J. E. Caldwell, principal and interest, 5,400 dollars, but say		5,000 00
Bond and mortgage, Arch'd Stokes, Savannah		850 00
Do. do., Robert Dickey, principal and interest from 23d July, 1814, not included		7,500 00
3 lots ground, late Stewart's, near this city		900 00
60 Utica Glass Co. shares, paid on each 360 dollars		2,160 00
151 bales cotton at New Orleans, wt. 51,063 French, at 12 cts		6,127 00
At Fayal, 17,000 dollars, but say		16,000 00
Money in Great Britain, Arch'd McGoun, principal	£3,994. 00. 2	
J. & A. Dennistoun	70. 18. 6	
Batard, Sampson & Sharp	99. 14. 0	
Alex. McGregor	7. 16. 4	

	Four thousand, one hundred and seventy-two pounds, 9 shillings, say	13,000 00
3	Western Inland Lock Navigation shares, paid on them	250 00
2	shares in Mr. Finley's Academy at Baskingridge, Oct. 21, '09	200 00
1	pew in 2nd Presbyterian Church of Newark, No. 84	170 000
1	hhd. coffee, No. 3, (e. 7, q. 2, lb. 23, lb 863) lb. 759, Tare .04	
	nt. cost 25¼ cts.	191 65
1	bbl. coffee, 185, tare 18, is nt. 167 .18&2	30 37
86½	casks flaxseed 8½	735 25
	11 ps. Russia duck .42	462 00
141	5 M. feet oak boards .20	$100 00
	1 M. do. plank .35	35 77
15	M. barrel staves .29	435 00
5	hhd. dressed .45	
324	heading .45	26 75
1	anchor in the yard, 1,050 lbs. 8 cts.	84 00
37	boxes Martinique noyeau .12 drs.	444 00
357½	bushels apples sent to Ja's T. Baldwin's distillery	47 19
	Part of a box of castile-soap.	
2	barrels pearl ashes, S. & W.	
76	ps. flag hdfs., at 13 drs .988	
93	ps. bando do., 10 drs .930	
		1,918 00
1	share in city library, cost about	25 00

REAL ESTATE.

First—In City of New York.

No. 53	Broadway, house, lot, and stable	30,000 00
25	South street, store, lot, and portion of piers 9 and 10	11,000 00
45, 47	Pearl street, 2 houses and lots	18,000 00
211	Pearl street, house and lot, and running through to	25,000 00
10	Gold street, a frame house	
⅔	of 2 lots, Washington street, 20 feet front, 92 and 94 feet west, to House's bakery	3,000 00
7	lots and 1 house of 1 story, 2d street,	
7	lots and 1 house of 2 stories, 3d street,	
4	lots, Third and Fourth streets (2 2)	
2	lots, Rivington street, next to the Patent Floor-Cloth Manufactory	30,000 00
7	lots, Elizabeth st., and Grand st., 1 two-story and 1 one-story house, from Grand street, south on Elizabeth st., west side	
3	lots Mott street, and 1-story house, east side	

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2	lots land, Southampton road, Nos. 54 and 58, containing 5a., 2r., 24 per., and a 2-story house, stable, and well, improved	11,000 00
2	lots land, Fitzroy road, about 1 acre, Nos. 28 and 32, imp. cost	1,700 00

Second—In State of New York.

200 100	A lot, with a store and house, at Troy, 50 ft., running from Water st. to the Hudson River	4,000 00
5	lots at Brooklyn	400 00
23,326		
22,000	acres land in this State at $2½ per acre	55,000 00
6,465	acres land at the Four corners, at $2 per acre	12,930 00
2,264½	acres land in the Hardenburgh, at $1½ per 1½ acres	3,396 00

Third.—At Newark, N. J:

10.37	house, stable and buildings, with 10½ acres land improved	12,000 00
2.73	2¾ acres land opposite ditto, cost	1,200 00
1.12	12/100 do. A. Young's, with half of barn thereon	
4.43	4½ acres of land, Maney Ward's, an excellent well, with brook running through it	1,200 00
2.51 / 11.11	20 acres of land next Sayre's quarry, at $50	1,000 00
39.27		

5 98/100	acres parsonage lot, on lease, at $15 per acre	
1	share in the 2 story brick house next to the academy, cost	250 00

143 MEMORANDA OF DISPOSABLE FUNDS.

1,270	dollars, 6 per cent. 80 per cent	$1,016 00
	Hones & Town	120 00
76	ps. flags ..... 12 drs 912	
93	ps. bandannoes, 10 drs 930	
		1,842 00
	Paid Richard Black, (beef,)	64 87
	Paid Corn's Coolidge & Co., Boston 778 15	
	Robert Dickey's bond and int., 23 Ja'uary 1815 .2,587 50	
		3,365 65
	Jeduthan Day, New Foundland, my ⅔, about	1,000 00

If the surrogate should refuse to entertain jurisdiction of the proceeds of real estate sold previous to 1829, it will be pursued against Boorman in the general suits for the recovery of the real estate sold after the partition in 1829, to all of which he will be made a party.

The truth is, the executors under the 12th item of the will and codicil were merely created trustees to divide the estate, and having accomplished that on the 14th day of November, 1829, all their subsequent sales to Dyson or any one else, was an unauthorized usurpation of control over the fee of the property, which was void in

law, (except for the life of the husbands and daughters,) and for which they became responsible.

The guarding of the executor Boorman against the receipt of any part of the consideration money in the big sale to Dyson, on the 20th December, 1829, was an attempt to dodge a responsibility which he plainly saw, and was a palpable fraud in fact.

The sale made to W'm Colgate in August, 1823, was collusive between the executors and Colgate, who was also a relative of Boorman.

There are various other matters of fact and fraud which will be pointed out as they are called for.

144 In the circuit court of the United States for the southern district of New York, sitting in equity.

G. A. CLARK ET AL.
vs.
BOORMAN'S EXEC'RS.

Deposition of witnesses taken in an action pending in the circuit court of the United States for the southern district of New York, sitting in equity, wherein G. A. Clarke et al. are plaintiffs, and Boorman's executors are defendants, and for said plaintiffs, in pursuance of the notice hereto attached, A. H. Blackiston and J. W. Denver for plaintiffs, and Mason, of the firm of Knox & Mason, for defendants, being present.

C. M. THURSTON, of Cumberland, county of Alleghany, State of Maryland, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

Residing in Cumberland; age, seventy; was acquainted with Jannette Clarke.

Question, (by J. W. Denver, for pl'ff.) What was the state of Jannette Clarke's mind?

(Objected to by def.)

Answer. She was of feeble mind. Do not remember with whom she resided. She was at a boarding-house in Cumberland from 1840
145 to 1845; was acquainted with Matthew Sinclair Clark very well. He was a man of brilliant character. He was capable of exercising great influence over persons he was associated with.

Question, (by J. W. Denver, for pl'ffs.) State whether, knowing as you did, the feebleness of mind of Mrs. Jannette Clarke, and the superior order of the mind of Matthew Sinclair Clark, whether he could not have exerted very great influence over her?

(Objected to by def.)

Answer. He could do so at any time during my knowledge of her.

Question, (by J. W. Denver, for pl'ff'.) Can you state any facts or circumstances, of your own knowledge, in which such influence was exercised?

(Objected to by def.)

Answer. I cannot.

Question, (by J. W. Denver, for pl'ffs.) Were you acquainted with George A. D. Clark?

Ans. I was, very well. He was the son of Mrs. Jannette Clark. His mind was very irregular—weak, in fact; knew him seven or eight

years. He was a clerk in the Mineral Bank, at Cumberland, of which I was the president.

Question, (by J. W. Denver, for pl'ff'.) State whether, in your opinion, George A. D. Clark would have done anything contrary
146 to the wishes of Matthew Sinclair Clark.

Ans. His uncle always exercised a great deal of influence over him.

Question, (by J. W. Denver, for pl'ff'.) Can you state whether Matthew Sinclair Clark ever informed George A. D. Clark of the interest he was entitled to in the estate of his grandfather, James R. Smith?

Ans. I cannot. I have heard George A. D. Clark say that he had an interest in property in New York, left him by his grandfather. I have heard him repeatedly speak of it in general conversation. His speaking of it was in a general way—nothing specific. He was always bare of money; had nothing more than the salary he got from the bank, that I know of, while he was residing in Cumberland. Matthew Sinclair Clark was here often during that time.

Question, (by J. W. Denver, for pl'ff'.) When George A. D. Clark spoke to you about interests that he had coming from his grandfather's estate, did he speak of them with certainty, or with a grave suspicion that he had some such interests?

Answer. He spoke with certainty of some expectations from New York, which I inferred were from his grandfather's estate.

147 Question, (by J. W. Denver, for pl'ff'.) Did you ever hear him speak of expecting any estate through his mother?

Answer. I did not; but inferred, from conversations, it was only through his mother that he expected any estate.

Cross-examined by def.:

George A. D. Clark came to the Mineral Bank about the year 1840; was appointed teller; remained in that position four or five years, until he left the bank. His duties were receiving money, entering it in the books of depositors, and giving general assistance to the cashier. It was a position of responsibility. He was not a capable and efficient officer. He remained here for some time after he left the bank, not being engaged in any business; discovered during the first year that he was not an efficient officer; kept him because could get nobody else.

(Signed by) C. M. THURSTON.

148 Also, JOHN T. EDWARDS of the city of Cumberland, county of Alleghany, State of Maryland, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

I knew Mrs. Jannette Clarke for several years, from the year 1838 or 1839 up to the time she left.

Question, (by A. H. Blackiston, for plff.) What was the character of her mind during the time you knew her?

(Objected to by def.)

Answer. I considered her a woman of rather a weak mind. Knew Matthew Sinclair Clark, slighty; do not know the chracter of his mind.

Question, (by A. H. Blackiston for pl'ff.) Do you know whether Mrs. Jannette Clark was under the influence of Matthew Sinclair Clark?

(Objected to by def.)

She seemed to be, so far as I knew. I knew very little about her affairs.

(Signed by) JOHN T. EDWARDS.

149 Also, Dr. JAMES M. SMITH, of the city of Cumberland, county of Alleghany, State of Maryland, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

I knew Mrs. Jannette Clark, I am a practising physician; was Mrs. Clark's physician during the time she was here.

Question, (by A. H. Blackiston, for plff.) What was the character of her mind during the time you knew her.

(Objected to by def.)

She was a very frail woman when she came here; had evidently been sick for a long time. Her mind was rather feeble. Knew Matthew Sinclair Clark as an acquaintance, not very intimately; met him on his visits here; did not know him anywhere else.

Question, (by A. H. Blackiston, for plff.) Do you know of any influence exerted by Matthew Sinclair Clark over Mrs. Jannette Clark?

Answer. I have never been in position to know personally whether he exerted any influence over Mrs. Jannette Clark, but she always spoke of him with great deference.

Question, (by A. H. Blackiston, for plff.) What was the gen-
150 eral impression in the community in regard to his influence over her?

(Objected to by def.)

Answer. I don't suppose there was any impression on the subject here; knew George A. D. Clark. He was very much like his mother, about the same mental calibre. He generally had good health and was not broken down like his mother. I knew very little personally of the intercourse between Matthew Sinclair Clark and George A. D. Clark.

No cross-examination:

(Signed by) JAMES M. SMITH.

I, Daniel Arman, notary public within and for Alleghany County, State of Maryland, do hereby certify that the above-named C. M. Thurston, John T. Edwards, and James M. Smith, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing depositions by them respectfully subscribed, were reduced to writing by me and were written, and by said witnesses respectively subscribed in my presence, and were taken at the time and place specified in the notice hereunto attached.

151 Witness my hand and notarial seal this twenty-seventh day of May, 1870.

[NOTARIAL SEAL.] DANIEL ARMAN,
Notary Public.

Fees.

Writing depositions,	4
Swearing witnesses &c.	1 37½
Paid by pl'ffs.	5 37

I hereby certify that the foregoing is a true copy.

[NOTARIAL SEAL.] DANIEL ARMAN,
Notary Public.

152 Circuit court of the United States for the southern district of New York.

GEORGE A. CLARK ET AL.
vs.
JAMES B. JOHNSON ET AL., EXECUTORS OF James Boorman, deceased. } In equity.

Evidence on the part of the complainants, taken pursuant to the 67 rule in equity, before me, Joseph Gutman, jr., examiner.

N. Y., *June* 14, 1870, 2.30 *p. m.*—Present, Louis Janin, esquire, of counsel for complainants, and the witness T. P. Shaffner.

At 3.10 p. m. no one appearing on the part of the defendants, the examination was adjourned to June 15th, 1870, at 11 a. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

N. Y., *June* 15, 1870, 11 *a. m.*—Present, Mr. Janin, counsel for complainant', and Mr. Mason, of counsel for defendants.

153 TALIAFERRO P. SHAFFNER, a witness of lawful age, produced, on the part of the complainants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Janin, of counsel for complainants, deposes and says:

1 Q. Were you not acquainted with George A. De Clarke?

A. I knew George A. De Clarke, formerly of Cumberland, Maryland, and his widow, formerly Miss Virginia Kehler, of the same place, and also their children. The widow since married a Mr. Quinn, and has, I believe, two children. I became acquainted with Mr. Clarke in March, 1840, at Cumberland, Maryland. During the same year I became acquainted with Miss Virginia Kehler, who subsequently married Clarke. During the years 1840, 1841, 1842, and 1843, Clarke and myself were very intimate and were together nearly every day or night, when I was at home in Cumberland. Clarke was teller in the Mineral Bank
154 of Maryland. I was a student at law during the years above named. Clarke and myself were great Freemasons and Odd-Fellows, which brought us together in the most confidential relations. I knew all about his affairs, either as to business or domestic matters. This intimacy was maintained during a later period of Clarke's life until his death, which occurred about 1856 or 1857, during my absence in Europe; but I did not see him except on my visits to Cumberland or Washington, about once a year, after 1843. The last time I saw him in Washington City was in January or February, 1855. His mother was then dead. He always expected to inherit considerable property on the death of his mother. At the time I last saw him he spoke of his property, and that he had not received anything from his mother's estate, but that he had been cheated out of everything. He was unable to give me any account of how the estate was administered—his mother's estate. In the conversations generally he attributed his losses of the property that he expected from his mother to Mathew St.
155 Clair Clarke. I suggested to him to attach Matthew St. Clair Clarke's interest in the publicatiou of the American Archives, a publicafion authorized by Congress under the direction of Peter Force and the said Clarke, and I saw Mr. Force, who stated that the said

Clarke had parted with his interest in the said work many years before.

Q. Did you know the mother of George A. De Clarke; and what was her degree of intelligence and capacity, as well as of her son, George A. De Clarke?

(So much of said question as refers to the degree of intelligence and capacity of Mrs. Clarke objected to by defendant's counsel.)

A. I knew the mother of Clarke very well. She was a woman of kind disposition, but as to intelligence an imbecile. She required the closest nursing, and was incapable of doing any business. George A. De Clarke was the most eccentric man, and known as such, in the town of Cumberland. He had a remarkable memory on some subjects. He was well informed upon the Bible and the use of figures, but on business affairs, especially in reference to his
156 own, he was as weak as his mother; and another friend, Thomas F. White, and myself guided him with our advice, principally, from 1840 to 1843, inclusive. At that time he had his salary from the bank and some compensation from the lodges for his support. I am not aware that he received anything from his mother, as her own means were very limited. There were always great expectations as to her future wealth, but I never saw anything realized. He was continually, at my suggestion, and, I suppose, at other friends', urging his mother to have a settlement of her property or rights with Mathew St. Clair Clarke, who seemed to control the mother as he pleased, and G. A. D. Clarke, although he made repeated efforts to obtain information respecting her property, was unable to obtain it. My intimacy with Mr. G. A. De Clarke continued during the latter period of his life and throughout his life; and whenever I visited Washington, to gratify him, I would give him an evening to consider and advise with him as to his condition, he then being very poor. His expectation, so far as referred to hereinbefore, had reference, solely to the property of his mother, with this ex-
157 ception, that, in the time I saw him, in 1855, he spoke to me about some property that he was likely to inherit, lying in New York. He had been informed that he was one of the heirs; but he did not seem to know much about it. He offered to employ me as his lawyer, to examine into it and attend to it for him, and was willing to give me any fee that I required. He was not able to give me information enough to work up the case nor to find out anything, but I promised to employ a lawyer here for him, and he, Clarke, was to give this New York lawyer further information. On my return to New York, I employed Robert D. Holmes, who was my general lawyer at that time. In March, 1855, I returned to Russia, and left the business as above stated. Mr. Holmes is now dead, having recently died.

Q. What information did Clarke give to Mr. Holmes, and what did Mr. Holmes ever do about the case?

(Objected to by counsel for the defendants.)

A. I returned from Europe some time in 1857. When I saw Holmes, I spoke to him about the affair and he told me that he had corres-
158 ponded with Clarke, but that Clarke was never able to give him any more information than what I had given him, and thus the business rested. Besides, Holmes said that Clarke informed him that he was unable to pay him a fee or to pay the expenses of the necessary search.

Q. Can you recollect in a general way, what information you gave to Holmes about the case?

A. I do not recollect what it was, but it was so very little, as Clarke could not tell me anything more than that he had recently heard that

he was an heir to some property, lying in New York, from his ancestors. He could not refer me to any documents. He said he had got the information referred to above from a letter that some one (whom he possibly named) had written him. He had never seen any will or other legal documents and could not refer me to any, but supposed they were on record here. I never saw any will.

And being cross-examined by Mr. Mason, of counsel for defendants, the witness deposes and says as follows:

159 During my intimacy with Clarke, at Cumberland, from 1840 to 1843, I may say that in general he talked to me about the whole of his family. I have no special recollection of his conversations being particularly directed about any of his family except his mother and Mathew St. Clair Clarke. I have no recollection of having heard him speak of his grandfather, James R. Smith, except as qualified above. I have no personal knowledge of his urging his mother to have a settlement with Mathew St. Clair Clarke, except upon one occasion, at Cumberland. I had no personal knowledge of Mathew St. Clair Clarke exercising any influence over Mrs. Clarke. I only know of it from statements of G. A. De Clarke and all the friends of the family. It was generally known and believed. I have no personal knowledge of George Clarke endeavoring to obtain information from Mathew St. Clair Clarke respecting his property.

TAL. P. SHAFFNER.

Subscribed & sworn to before me this 15th day of June, A. D. 1870.
JOSEPH GUTMAN, JR.,
Examiner, &c.

160 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Gutman, jr., a master and examiner in chancery, duly appointed in the circuit court of the United States, for the southern district of New York, in the second circuit, do hereby certify that the foregoing are the depositions of a witness examined before me, on the part of the complainants in the cause in the caption named on the 15th day of June, A. D. 1870, at my office, in the city of New York.

Dated N. Y., June 15, 1870.

JOSEPH GUTMAN, JR.,
Master and Examiner-in-Chancery, S. D. N. Y.

(Endorsed:) C. C. U. S., S. D. N. Y., in equity. George A. Clarke et al. vs. James B. Johnston et al., executors of James Boorman, deceased. Testimony taken on the part of the complainants, under the 67th rule, before Joseph Gutman, jr., examiner, &c. Shaffner. Filed Sept. 24, '70.

161 [SEAL.] The President of the United States of America to J. W. Horner, esq., notary public, Denver City, Colorado, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents, do give you full power and authority, diligently to examine upon his corporal oath or affirmation, before you to be taken, and upon the interrogatories hereunto annexed, John H. Kehler, as a witness, on the part of the plaintiff,

in a certain cause now pending undetermined in the circuit court of the United States of America, for the southern district of New York, second circuit, wherein George Augustus Clarke & als. are plaintiffs, and James B. Johnston, & als., exec'rs, &c., defendants.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons, who may be produced as witness before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal directed to circuit court of the United States for the southern district of New York, care of Kenneth G. White, esq., clerk of said court, as soon as may be convenient after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, this 26th day of May, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the ninety-fourth.

KENNETH G. WHITE, *Clerk.*

MAX. GOEPP, *Pl'tff's Attorney.*

162 *Instructions to commissioners.*

Annexed to the commission is an extract from the statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample

INSTRUCTIONS:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear that the answers which shall be given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear, in the presence of the ever living God;" and while so swearing he may or may not hold up his hand, in his discretion.

Or, if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses, produced, sworn (or affirmed) and examined,

the day of , in the year one thousand eight hundred and at
under and by virtue of a commission issued out of the circuit court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein

as follows:

A. B. of (insert his place of residence and occupation) aged years and upwards, being duly and publicly sworn, (or affirmed,) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First. To the first interrogatory he saith, &c. [Insert the witness's answer.] Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this day of 18 before—

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, wherein

this paper writing was produced and shown to (insert the witness's name) and by him deposed unto at the time of his examination, before—

Commissioners.

163 VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 before—

Commissioner.

X. The commissioner will make return on the back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories,

cross-interrogatories, depositions and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seal at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

U. S. circuit court, southern district of New York.

vs.

To , esquire,
Clerk of the circuit court of the United States, for the Southern District of New York, at the City of New York.

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following endorsement thereon:

"Deposited in the post-office at
this day of 18 , by me,

Commissioner."

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter-bag of the now lying at
and bound for the port of New York, this day of 18 , by me.

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place upon , who will direct him as to its delivery.

164 Circuit court of the United States. Southern district of New York.

GEORGE AUGUSTUS CLARKE AND JEANET Regina Clarke, by Reuben Middleton, their guardian, &c.,
vs.
JAMES B. JOHNSTON AND ADAM NORRIE, AS executors, &c., of James Boorman, deceased.

Be pleased to take notice that the plaintiffs have this day caused to be filed in the office of the clerk of this court, interrogatories, of which

the annexed are a copy, to be propounded to John H. Kehler, a witness on behalf of the plaintiffs, who resides at Denver City, Colorado; and that the plaintiffs will apply, on the 21st day of May, A. D. 1870, at 11 o'clock in the forenoon, at the chambers of said court, to one of the judges thereof, for an order that a commission may issue in this action, to be directed to J. W. Horner, esq., notary public, of said Denver City, (or to such other person as said judge may name,) to examine the said John H. Kehler on said interrogatories, and on such cross-interrogatories as you may file and serve in the meantime.

Dated May 9, 1870.

165 MAX. GOEPP, *Solicitor for Pl'ffs.*
HUGHES, DENVER & PECK,
LOUIS JANIN & SON, *Of Counsel.*

To KNOX & MASON, Esq's.,
Def'ts Solicitors.

Circuit court of the United States for the second circuit and second district of New York.

G. A. CLARKE ET AL. *vs.* BOORMAN'S EX'RS. } In equity.

Interrogatories to be propounded to John H. Kehler, at Denver City, in the Territory of Colorado, a witness examined on the part of the complainants.

1st interrogatory. What is your name, age, and profession and present residence?

2nd interrogatory. What is your relationship to the minors, Geo. Augustus Clarke and Jeanet Virginia, who have instituted this suit to recover the legacy made to their late father, George Augustus D. Clarke, by his grandfather, James R. Smith, or its equivalent?

166 3rd interrogatory. Did you know the late Jeanet or Jeanette Clarke, the mother of said George Augustus D. Clarke, and did you know her husband, the late John A. Clarke?

4th interrogatory. Where and with whom did the said Jeanet Clarke go to reside after she was left a widow?

5th interrogatory. Did you know the late Mathew St. Clair Clarke, and what were his relations to the said Jeanet Clarke, and what was the nature of his business with her?

6th interrogatory. What was the degree of intelligence or capacity which the said Jeanet Clarke had for transacting the kind of business in which she was connected with the said Mathew St. Clair Clarke?

7th interrogatory. Did the said Jeanet Clarke attend to her interest in the estate of her father, James R. Smith, herself, or did she leave the management to others; and if so, to whom?

8th interrogatory. Had the said Jeanet Clarke great confidence in one man, in connection with said business; and if so, who was that man, and did that man exercise great influence over her; and if so, how was it manifested?

167 9th interrogatory. Had the said Jeanet Clarke the intelligence and independence of liberating herself from that influence; and if not, why not?

10th interrogatory. Did you know the late George Augustus D. Clarke, the son of said Jeanet Clarke, and from what time to what time did you know him? Was your intercourse with him very intimate or not?

11th interrogatory. During the entire course of your acquaintance with the said George Augustus D. Clarke, did you ever discover that he was entitled to any and to what property, under the will of James R. Smith, his grandfather, and had he ever the means of ascertaining said rights?

12th interrogatory. Was the said George Augustus D. Clarke dependant on and under the influence of particular persons; and, if so, what persons—and had he the means of liberating himself from that influence?

13th interrogatory. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the
168 subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

MAX. GOEPP,
Pl'ff's Solicitor.

Allowed, May , 1870, by consent.

CHA'S L. BENEDICT.

(Endorsed:) U. S. circuit court. G. A. Clarke et al. vs. Boorman's ex'rs. Interrogatories & notice of application for commission. Max. Goepp, pl'ff's solicitor.

Due service of a copy of the within notice, &c., is hereby admitted. May 10, 1870.

KNOX & MASON, *Def't's Sol'rs.*

Motion adjourned to 20 May, '70, at 11 a. m.

KNOX & MASON, *Def't's Sol'rs.*

Commission within noticed consented to.
26th May, 1870

KNOX & MASON, *Def't's Sol'rs.*

169 Deposition of witness produced, sworn, and examined the thirteenth day of June, in the year one thousand eight hundred and seventy, at Denver, in the county of Arapahoe, and Territory of Colorado, at the office of J. W. Horner, under and by virtue of a commission issued out of the circuit court of the United States, for the southern district of New York, in a certain cause therein depending and at issue, wherein George Augustus Clarke and Jeanet Virginia Clarke, by Reuben Middleton, their guardian, are plaintiffs, and James B. Johnston, & Adam Norrie, as executors, &c., of James Boorman, deceased, are defendants, as follows:

JOHN H. KEHLER, of Denver, in the county of Arapahoe, in the Territory of Colorado, a clergyman of the Protestant Episcopal Church, aged seventy-three years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he saith: My name is John H. Kehler. My age seventy-three years. I am by profession a clergyman in the Protestant Episcopal Church. My present residence is Denver, Colorado."

Second. To the second interrogatory he saith: That he is the grand-

er of the minor children, George Augustus Clarke and Jeanet Virginia Clarke.—(J. W. HORNER, *Notary Public and Commissioner to take Depositions in this Cause.*)

170 Third. To the third interrogatory he saith: I did know the late Jeanet or Jeanette Clarke, the mother of said George A'gustus D. Clarke, but did not know her husband, the late John X. Clarke.

Fourth. To the fourth interrogatory he saith: I cannot state of my own personal knowledge, where she went to reside, or with whom, after she was left a widow. After the death of her husband, I first saw her at Cumberland, Maryland, where she boarded with a family named Seawright; after which she removed to Washington City, D. C., and resided with her brother-in-law, Mathew St. Clair Clarke, until the time of her death, with the exception of visits which she paid to her friends.

Fifth. To the 5th interrogatory he saith: I did know the late Mathew St. Clair Clarke. He was brother to the late husband of the said Jeanet Clarke. He had the entire financial management of her business.

Sixth. To the *fifth* interrogatory he saith: The said Jeanet Clarke was a very weak-minded woman, caused chiefly by sickness, and on account of her great imbecility of mind I did not consider her competent to sign any important papers, or to transact any business of any kind whatever.

Seventh. To the seventh interrogatory he saith: The said Jeanet Clarke did not attend to her interest in the estate of her father, James

171 R. Smith, herself, but left (J. H. HORNER, *Notary Public & Commissioner to take this Deposition.*) it to the sole management of the said Mathew St. Clair Clarke, brother of her late husband.

Eighth. To the eighth interrogatory he saith: The said Jeanet Clarke had great confidence in one man in connection with said business. That man was the said Mathew St. Clair Clarke, brother of her late husband. The said Mathew St. Clair Clarke did exercise great influence over her. For example: I have seen him come into the house seemingly in a great hurry and say, "Here, Jeanet, is a paper that I want you to sign. Don't ask me any questions. I am in a great hurry. It is all for your good," when she would sit down and sign it without reading a word of it.

Ninth. To the ninth interrogatory he saith: I am of the impression that the said Jeanet Clarke had not sufficient intelligence and independence of character to liberate herself from that influence, and for the reason that she was in very bad health, her mind very weak, indeed, and she seemed to be in great dread of the said Mathew St. Clair Clarke. She seemed to think that her support and maintenance depended solely upon said Clark, and to fear that he would withhold it.—(J. H. HORNER, *Notary Public and Commissioner to take this Deposition.*)

172 Tenth. To the tenth interrogatory he saith; I did know the late George Augustus D. Clarke, the son of said Jeanet Clarke. I knew him from the year one thousand eight hundred and forty-four, until the time of his death, in the year one thousand eight hundred and fifty-five. He was my son-in-law, and, as my daughter's husband, my intercourse with him was very intimate.

Eleventh. To the eleventh interrogatory he saith: That the said George Augustus D. Clarke evidently knew that he was entitled to property under the will of his grandfather, James R. Smith, but that his ideas were very vague as to the amount and value of said property. I read the will, or what purported to be the will of the late James R. Smith, deceased, and I discovered from it that the said George Augustus D. Clarke was entitled to property under it, but as to what particular property and the amount of it my ideas are very indefinite. That the said George Augustus D. Clarke had not the means, the pecuniary means,

to investigate his rights under said will, or to travel from Washington to New York City for that purpose, as it required his whole salary to support his family.—(J. H. HORNER, *Notary Public and Commissioner to take this Deposition.*)

173 Twelfth. To the twelfth interrogatory he saith: That the said George Augustus D. Clarke seemed to be under the influence of and dependent upon his uncle, Mathew St. Clair Clarke, and to dread the displeasure of his said uncle for fear he would withhold his mother's support. As I have before stated, George Augustus D. Clarke was a poor man, had a family to support, was dependant on his salary as a clerk, had not the means necessary to investigate his rights under said will, dreaded any collision with his said uncle, Matthew St. Clair Clarke, fearing, as stated, that in such an event that said uncle might withhold or withdraw the support which he extended to Mrs. Jeanet Clarke, the mother of him, the said George Augustus D. Clarke.

Thirteenth. To the thirteenth interrogatory he saith: That he knoweth nothing further at this time, my attention not having been directed to any new matter.

JNO. H. KEHLER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this thirteenth day of June, A. D. 1870, before me.

[L. S.] JOHN H. HORNER,
Commissioner to take this Deposition and a Notary Public in and for the County of Arapahoe in the Territory of Colorado.

174 *Notary fees.*

Taking deposition 13 fos., *a.* 20	2 60
Swearing one witness	25
1 day's attendance	2 50
Certificate & seal	1 00
	$6 35

(Endorsed:) Filed Sept. 24, 1870.

175 The President of the United States of America to James Bradley, [SEAL.] esq., magistrate of Old Fort, McDowell County, North Carolina, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine upon their corporal oaths or affirmations, before you to be taken, and upon the interrogatories hereunto annexed, S. B. Erwin & Ella S. Erwin, who reside at Old Fort, McDowell County, North Carolina, as witnesses on the part of the plaintiffs, in a certain cause now pending undetermined in the circuit court of the United States of America for the southern district of New York, second circuit, wherein George Augustus Clarke & als., are plaintiffs, and James B. Johnston & al. are defendants.

And we do further empower you to examine on the same behalf, and in like manner any other person or persons who may be produced as witness before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing and to close it up under your hand and seal, directed to circuit court of the United States for the southern district of New York, care of Kenneth G. White,

esq., clerk, N. Y. City, as soon as may be convenient after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, this 9th day of June, in the year of our Lord one thousand eight hundred and seventy and of our Independence the ninety-fourth.

KENNETH G. WHITE, *Clerk.*

MAX GOEPP,
Pl'ffs Attorney.

176 *Instructions to commissioners.*

Annexed to the commission is an extract from the statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners they are requested to observe the following more ample

INSTRUCTIONS:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act let the fact that they were notified, or could not be notified, and the reasons for their not acting be stated.

II. The commission must be executed by the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear that the answers which shall be given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it he shall be permitted to swear in the following form: "You do swear, in the presence of the ever-living God;" and while so swearing he may or may not hold up his hand, in his discretion.

Or, if the witness shall declare that he has conscientious scruples against taking an oath or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words "So help me God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses produced, sworn, (or affirmed,) and examined the day of in the year one thousand eight hundred and at under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein

as follows:

A. B. of (insert his place of residence and occupation) aged years and upwards, being duly and publicly sworn (or affirmed,) pur-

suant to the directions hereto annexed, and examined on the part of the , doth depose and say as follows: First. To the first interrogatory he saith, &c. [Insert the witness's answer.] Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of , 18 , before—

Commissioner.

VII. If any papers or exhibits are produced and proved they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners in this manner:

"At the execution of a commission for the examination of witnesses wherein this paper writing was produced and shown to (insert the witness's name) and by him deposed unto at the time of his examination, before—

Commissioners.

177 VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioner as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness this day of , 18 , before—

Commissioner.

X. The commissioner will make return on the back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits must be folded into a packet and bound with tape. The acting commissioners are to set their seal at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

U. S. circuit court southern district of New York.

vs.

To , esquire,
Clerk of the Circuit Court of the United States for the Southern District of New York, at the City of New York.

XII. When the commission is thus executed, made up, and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following endorsement thereon:

"Deposited in the post-office at this day of , 18 , by me.

Commissioner."

In case of returning the commission by a vessel it is to be deposited by one of the acting commissioners in the letter-bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter bag of the now lying at and bound for the port of New York, this day of , 18 , by me.

Commissioner.

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon , who will direct him as to its delivery.

178 Circuit court of the United States for the southern district of New York.

CLARKE
vs.
BOORMAN'S EXECUTORS.

Interrogatories to be propounded on behalf of the plaintiffs to S. B. Erwin, and Ella S. Irwin, his wife, of Old Fort, McDowell County, North Carolina.

Interrogatory 1st. What is your name, age, and profession?

Interrogatory 2d. Are you acquainted with George Augustus Clarke, and Jeanet V. Clarke, the minor children of the late Geo. A. D. Clarke,

and with their mother the daughter of the Rev. John A. Kehler, and now the wife of Tho's H. Quin?

Interrogatory 3d. What connection or relationship exists between you and either of the parties named in the second interrogatory?

Interrogatory 4th. Where did you reside from 1852, to the time of the death of Geo. A. D. Clarke?

Interrogatory 5th. Were you present when any person, verbally or in any other way, stated to the said Geo. A. D. Clarke, that he had claims arising from the estate of his grandfather, James R. Smith; and, if so, what was stated to him. Please state all the circumstances as
179 particularly as your rememberance of the circumstances will permit?

Interrogatory 6th. How much time elapsed, as nearas you can recollect, between the reception of the above mentioned information or intimation, and the death of the said Geo. A. D. Clarke, and what was the state of his health during that time? Did he during all this time visit the city of New York; and if not, why did he not?

Interrogatory 8th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that may be material to the subject of this examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

LOUIS JANIN & SON,
Of Counsel for Pl'ffs.

Notice acknowledged and cross-interrogatories waived.

KNOX & MASON,
Sol'rs for Def'ts.

180 Circuit court of the United States for the southern district of New York.

CLARKE
vs.
BOORMAN'S EXECUTORS.

Deposition of witnesses, produced and examined the 21st day of September, in the year one thousand eight hundred and seventy, at Old Fort, McDowell County, State of North Carolina, under and by virtue of a commission issued out of the circuit court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein George Augustus Clarke et als. are plaintiffs, and James B. Johnston & als. are defendants, as follows:

ELLA S. ERWIN, of Old Fort, McDowell County, North Carolina, aged thirty-seven years and upwards, being duly sworn, and publicly, pursuant to *to* directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory. "What is your name, age, and profession?" she saith: My name, Ella S. Erwin; aged thirty-seven years & upwards.

Second. To the second interrogatory, "Are you acquainted with George Augustus Clarke and Jeanet V. Clarke, minor children of the late
181 Geo. A. D. Clarke, and with their mother, the daughter of the Rev. John H. Kehler, and now the wife of Thomas H. Quin?" she saith: I am acquainted with George Augustus Clarke & Jeanet V.

Clarke, the minor children of the late George A. D. Clarke. I am well acquainted with mother, the daughter of the Rev. John H. Kehler, and now the wife of Tho's H. Quin.

Third. To the third interrogatory: "What connection or relationship exists between you and either of the parties named in the second interrogatory?" she saith: I am the sister of the mother of the minor children (George Augustus Clarke & Jeanet V. Clarke) of George A. D. Clarke, the daughter of Rev. John H. Kehler, and now the wife of Tho's H. Quin, therefore I am the aunt of George Augustus Clarke & Jeanet V. Clarke.

Fourth. To the fourth interrogatory, "Where did you reside from 1853 to the time of the death of George A. D. Clarke?" she saith: I resided in Washington City, District of Columbia, living with or in the same house with George A. D. Clarke & his wife then, my sister, & both of us daughters of the Rev. John H. Kehler; with them almost constantly from 1853 to the death of Geo. A. D. Clarke.

Fifth. To the fifth interrogatory, "Were you present when any person, verbally or in any other way, stated to the said George A. D. Clarke that he had claims arising from the estate of his grandfather,
182 (JAMES BRADLEY, *Commissioner*,) James R. Smith; and if so, what was stated to him. Please state all the circumstances as particularly as your remembrance of the circumstances will permit?" she saith: That, during my stay in Washington City, boarding in same house with the said Geo. A. D. Clarke & family, I distinctly recollect that said Clarke received a letter from Mrs. Franklin, or Mrs. Smith, a cousin of the said Clarke, and said Clarke read the letter in my presence and to me, in which it was stated that he, Geo. A. D. Clarke, had claims arising from the estate of his grandfather, James R. Smith, and advised him to see to them at once. Said Clarke was surprised at this information, and remarked that he (said Clarke,) never believed he had claims on estate of grandfather, James R. Franklin. Mr. Geo. A. D. Clarke, immediately commenced writing and making inquiries touching these claims.

Sixth. To the sixth interrogatory, "How much time elapsed, as near as you can recollect, between the reception of the above-mentioned information or intimation, and the death of the said Geo. A. D. Clarke, and what was the state of his health during that time? Did he during all this time visit the city of New York; and if not, why did he not?" she saith: I think it was about one year and a half from the reception of the afore-mentioned letter and Mr. Geo. A. D. Clarke's death. During this time, he was very much interested in these claims, constantly writing and
183 receiving letters from different persons. Mr. Geo. A. D. Clarke did not visit the city of New York during this time, because of his poverty; had a large family to support, and received a small salary as clerk in Interior Department in Washington City. Besides, he wrote for several members of Congress, to enable him to support his family; often expressed a wish to visit New York, but could not afford it. During the above-mentioned time, said Clarke's health was very bad; latter part of time, several days not able to go, and several days would go, and then be confined to his room & bed during the evening.

Eighth. To this interrogatory, "Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the partys at issue in this cause, or either of them, or may be material to the subject of this examination, or the matters in question in this cause? If so, set forth the same fully and at large in your answer" she saith: I am unable at present to state anything farther, more than said Clarke's

great anxiety about these claims, his want of funds to go to New York and see to it, and his failing health.

ELLA S. ERWIN.

Examination taken, reduced to writing, subscribed by the witness, and sworn to by the witness, this 21st day of September, 1870, before me.

JAMES BRADLEY,
Commissioner.

184 Circuit court of the United States for the southern district of New York.

CLARKE
vs.
BOORMAN'S EXECUTORS.

Deposition of S. B. Erwin.

Interrogatory 1st. What is your name, age, and profession?

Answer. My name is S. Bulon Erwin; my age 48 years; profession, book-keeper.

Interrogatory 2nd. Are you acquainted with George Augustus Clarke and Jeanet V. Clarke, the minor children of the late Geo. A. D. Clarke, and with their mother, the daughter of the Rev'd John H. Kehler, and now the wife of Thomas H. Quin?

Answer. I am well acquainted with George Augustus Clarke and Jeanet V. Clarke, the minor children of George Augustus D. Clarke, dec'd, and of their mother, the daughter of the Rev'd John H. Kehler, now the wife of Tho's H. Quin.

Interrogatory 3d. What connection or relationship exists between you and either of the parties mentioned or named in the second interrogatory?

Answer. I married, in 1853, the sister of the daughter of the Rev'd John H. Kehler, then the wife of George A. D. Clarke, & now
185 the wife of (JAMES BRADLEY, *Commissioner*,) Tho's H. Quin, and the mother of George Augustus Clarke and Jeanet V. Clarke.

Interrogatory 4th. Where did you reside from 1852 to the time of the death of Geo. A. D. Clarke?

Answer. In the city of Washington, District of Columbia, living with, or in the same house with Geo. A. D. Clarke, and his wife, the daughter of Rev'd J. H. Kehler, (my wife's sister,) and now the wife of Tho's H. Quin, and was with them constantly from 1853 until the death of Geo. A. D. Clarke, in 1855.

Interrogatory 5th. Were you present when any person verbally, or any other way, stated to the said Geo. A. D. Clarke, that he had claims arising from the estate of his grandfather, James R. Smith, and if so, what was stated to him? Please state all the circumstances as particularly as your remembrance of the circumstances will permit.

Answer. I was not present when Mr. Geo. A. D. Clarke received and read a letter from his cousin, Mrs. Franklin or Mrs. Smith, saying they had discovered some evidence that would establish his and their claim to property left them by their grandfather, James R. Smith, but he, the said Geo. A. D. Clarke, told me the contents, and said if he was able he would go to New York (JAMES BRADLEY, *Commissioner*,)
186 and attend to it; that but for the want of means he would go in person. I know he wrote to a lawyer in New York, to ex-

amine into the claim, but I do not recollect the name of the lawyer. I know he wrote a good many letters. He complained to me of his poverty; that he was not able to prosecute his newly discovered claims under the will of his grandfather, the late James R. Smith. This information came to him in the early part of 1854, some year and a half before his death. His health was at this time very bad. When he received this information, we were boarding at Mrs. Close's, on corner of 7th street and Louisiana avenue, and where Jeanet V. Clarke was born. I well recollect he went to visit the "Foxes," spiritualists, and he was so excited from the information just received. He told me (I did not go) he asked about the result, should he be able to bring suit; and he told me their answer was "he would gain." I recollect of laughing at him heartily, at his even seeming to believe in spirit-rapping."

Interrogatory 6th. How much time elapsed, as near as you can recollect, between the reception of the above-mentioned information and the death of the said Geo. A. D. Clarke, and what was the state of his health during that time? Did he, during all this time, visit the city of New York; and if not, why did he not?

187 Answer. It was some eighteen or twenty months from the time when the said Geo. A. D. Clarke received the information as to his having some estate coming to him from his grandfather, the late James R. Smith, to his (the said Clarke's) death. His health was very bad during all that time. He did not visit New York City during that time. The reason was his bad health and the want of means. I had this from his own lips, that he was too poor to go to the city of New York; and I know he had to write for several members of Congress—two I recollect: Hon. J. C. Breckenridge and Hon. Jos. R. Chandler; one or two others whose names I do not now recollect. I often helped him to address documents; others did so at same time. With all he barely supported himself & family.

Interrogatory 8th. Do you know, or can you set forth, any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I will state further that I became acquainted with Geo. A. D. Clarke, the father of the plaintiffs in this suit, (George Augustus Clarke and Jeanet V. Clarke,) in the year 1851, (JAMES BRADLEY,

188 *Commissioner*,) in the city of Washington, District of Columbia, and soon thereafter became intimate with him, which intimacy and cordial friendship existed without interruption to the day of his death. He often spoke of his affairs to me, of his father and family. Spoke of his surprise, when his mother died, to find her estate was insolvent, but at same time expressed the highest regards and esteem for his uncle, the late M. St. Clair Clarke. He nursed him during his last illness. (I think in 1852.) Seemed devoted to him. And when the information or intimation came to him, in 1854, that he had claims under his grandfather's will, the late James R. Smith, of New York, which could be established, he still seemed to have such a reverence for the memory of his uncle, the late M. St. Clair Clarke, that he could hardly credit it. This is my impression, formed from many conversations had with him on the subject; though it did not deter him from corresponding with parties in the city of New York. He never read any of the letters to me, but I am confident that had he had the means he would have gone on to New York to personally investigate the matter, even at the risk of his life, as his health, as stated before, was very delicate;

and I will further state, in all my conversations with the late Geo. A. D. Clarke, previous to 1854 and the reception of the above-stated information, to the best of my recollection, he never mentioned
189 his grandfather's (the late Ja's R. Smith) will or said he expected anything under it. I will state that M. St. Clair Clarke, mentioned in my answer to interrogatory 8th, I believe, was the administrator of James R. Smith, or Mrs. Clarke's guardian, at least had the charge of Mrs. Clarke's (Geo. A. D. Clarke's mother) property and affairs, and I have heard him speak of the said M. St. Clair Clark, getting his mother to sign papers, &c., as her agent, &c., or something of the kind. I will further state Mr. Geo. A. D. Clarke was a clerk in the Interior Department, when I first formed his acquaintance, under the Hon. A. H. H. Stuart, and afterwards under Hon. Jacob Thompson; at first a small salary, which was increased, but not enough to support his family.

All alterations & interlineations in this deposition were made before signing and being sworn to.

S. B. ERWIN.

Examination taken, reduced to writing, subscribed by the witness, and sworn to by the witness this 21st day of September, 1870, before me.

JAMES BRADLEY,
Commissioner.

Filed Sept. 26, 1870.

190 Circuit court U. S., southern district N. Y.

GEORGE AUGUSTUS CLARKE & AL.,
vs.
JAMES B. JOHNSTON & AL., EXECUTORS, &C., OF James Boorman, deceased.

It is agreed that the time to take and file depositions of witnesses herein be extended to Oct. 22, 1870, the cause to go on the calendar for the October circuit of 1870.

NEW YORK, *Oct.* 1, 1870.

The complainants to have a month longer to take testimony if they desire, and to have the option of trying the cause at the October circuit.

LOUIS JANIN,
For Complainants.
KNOX & MASON,
Sol'rs for Def'ts.

(Endorsed:) Circuit court U. S., southern dist. N. Y. In equity. George Augustus Clarke & al., vs. James B. Johnston & al., executors, &c. Consent to extend time to take proofs. Knox & Mason, sol'rs for def'ts. Filed Oct. 1, 1870.

191 Circuit court of the United States for the southern district of New York.

GEORGE AUGUSTUS CLARKE
vs.
JAMES B. JOHNSTON ET AL., EXECUTORS OF James Boorman, deceased. } In equity.

Proofs taken on the part of the defendants in the above action, under and pursuant to the 67th rule in equity, before me, Joseph Gutman, jr., examiner.

N. Y., *June* 20, 1870—12 *m.*—Present, Mr. Charles O'Conner and Mr. Mason, of counsel for defendants, and Mr. Janin, of counsel for complainants.

APPOLLOS R. WETMORE, a witness of lawful age, produced on the part of defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. O'Connor, of counsel for defendants, deposes and says, as follows:

I am a resident of the city of New York. I reside at 18 Washington square. I am a merchant, in the iron-trade. I have been so
192 engaged in the city of New York for 50 years. In his life-time I was very intimately acquainted with James Boorman, formerly of the city of New York. My acquaintance with him was during the whole course of my business life, until his death. He was a merchant. His principal business was the importation and sale of Swede and other iron. For a long time his firm was Boorman, Johnston & Co. He did a very large business also in tobacco, cotton, and domestic goods—commission-business.

Q. What were his character, standing, habits, and capacity as a citizen and a merchant?

(Objected to.)

A. As to character I consider it in every respect of a very high order. I consider him of high honor, strict integrity, and the best merchant I have ever been acquainted with in every respect. His methods of doing business were very careful and systematic—remarkably so. From the year 1825 and onwards he was always considered a wealthy man, in good credit, so far as I ever heard—of large means and large business.

And being cross-examined by Mr. Janin, of counsel for defendants, he deposes and says:

I never knew Peter W. Radcliff. I know there was such a
193 man. I did not know Robert W. Dyson.

A. R. WETMORE.

Subscribed & sworn to before me this 20th day of June, 1870.
JOSEPH GUTMAN, JR.,
Examiner, &c.

WILLIAM W. SMITH, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole and nothing but the truth in the

matter of controversy herein, and being examined by Mr. O'Conor, of counsel for defendants, deposes and says:

I am guardian clerk in the surrogate's office of the city and county of New York. I have been engaged as clerk or assistant in the surrogate's office during thirteen years last past. My duties have made me very conversant with the records of that office; have frequently had occasion to search the records. I have examined the records for the purpose of ascertaining the whole number of letters of administration and testamentary which have been issued in that office from 1820 to 1830, and find the number to be about four thousand letters of administration, and the letters testamentary about 3,500. This is during
194 ten years, from 1820 to 1830. During the same periods there were about 1,800 inventories filed in the office of the said surrogate.

(Cross-examination waived.)

WILLIAM W. SMITH.

Subscribed and sworn to me this 20th June, 1870.

JOSEPH GUTMAN, JR.,
Examiner.

EDWARD DE WITT, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein; and being examined by Mr. O'Conor, of counsel for defendants, deposes and says, as follows:

I am an attorney and counsellor at law in practice in the city of New York. I have been so since July, 1837. I am 54 years of age. I studied law in the office of my father, Peter De Witt, who was also a lawyer in the city of New York, and to whose business I, with my brother, have succeeded. My father commenced business as a lawyer, in the city of New York, in the year 1803. I was born in the
195 city of New York. My father's business consisted, chiefly, in real-estate matters and difficulties, and advising on loans and purchases; and my brother and myself have continued in this same branch. My father is deceased. He died in 1851. I was well and intimately acquainted with the late Peter W. Radcliff, formerly of New York, counsellor at law. My knowledge of him commenced from my earliest infancy.

Q. What was his character and standing as a citizen and a lawyer in respect to morality, attentiveness to business, and learning?

(Objected to.)

A. No gentleman in the profession stood higher either in morality or learning or in his attentiveness to his business. I do not think there was a more elaborate man in the profession. He was a member of the council of revision. I think he was at one time also state senator, and as such sat as a member of the court of errors. Late in life and upon the re-organization of Brooklyn he was appointed judge of the county of Kings.

And being cross-examined by Mr. Janin he deposes and says:

196 He was a brother-in-law of James Boorman. They married sisters.

EDW'D DE WITT.

Subscribed & sworn to before me this 20th day of June, 1870.
JOSEPH GUTMAN, JR.
Examiner, &c.

WILLIAM C. WETMORE, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and affirmed to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. O'Conor, of counsel for defendants, deposes and says as follows:

I am a resident of the city of New York and have been a practising attorney and counsellor therein for 40 years. I was well acquainted with the late Peter W. Radcliff who was also a counsellor at law in this city.

Q. What was his character and standing as a citizen and a lawyer in respect to morality, attentiveness to business, and learning?

(Objected to.)

197 A. He was a man that stood as high as any man at the bar in his time both as to moral and legal character. He was a peculiarly painstaking man in all his business.

Examination adjourned to June 22, 1870, at 12 m.
JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *June* 22, 1870, 12 *m.*—Present counsel as before and the witness.

WILLIAM C. WETMORE, being recalled on the part of the defendants, and being further examined by Mr. O'Conor, of counsel for defendants, deposes and says as follows:

Q. Please to look upon the paper-writing now presented to you, being an exemplification of a conveyance of property on Stanton street in the city of New York by Jeanette Clarke and another, to Peter Pinckney, and say whether, at any time, and about when, you had occasion

198 to act as counsel and advisor on a subsequent*quent* sale of the property described in that deed and purporting to be held under it?

A. I examined the title to that piece of property in the month of April, 1855, for George Hall, who purchased the premises from William Fanning.

Q. Did you call for any further assurance than that deed, as recorded, exhibited, by way of satisfying yourself that the title was safe.

A. I did, and, thereupon, there was produced to me the original deed, of which this is an exemplification, on the back of which was endorsed another paper, of which the paper now produced and shown to me is an 'emplified copy. This paper, so endorsed upon the deed, had not then been recorded, but the deed had been recorded and the exemplification shows that this paper has since been recorded.

(The paper first mentioned in the examination of this witness is marked Exhibit Wetmore, No. 1. The paper secondly mentioned in the examination of this witness is marked Exhibit Wetmore, No. 2.)

And being cross-examined by Mr. Janin, of counsel for complainants, deposes and says as follows:

199 I rejected the title on the ground that I wanted some release from the party, Mr. Clarke, and they said they had it and they

produced it. I have a distinct recollection that, in connection with this Smith title, that I saw this Mr. Clarke. He was a young man and I knew him as the son of Mrs. Jeanette Clarke—whether in this particular examination I cannot say.

W. C. WETMORE.

Subscribed & sworn to before me this 22d day of June, 1870.
JOSEPH GUTMAM, JR.,
Examiner, &c.

JOHN C. GREEN, a witness of lawful age produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. O'Conor, of counsel for defendants, deposes and says as follows:

I am a resident of the city of New York, and am a merchant. I
200 have resided and done business in the city of New York during my whole life, except an absence of 20 years in the country. I have been here now since 1840. I was well acquainted with James Boorman—now deceased—in his life-time. Our acquaintance was intimate. I knew him for 30 years prior to his death.

Q. What were his character, standing, and capacity as a merchant?

A. He had a character of great integrity, and as a merchant one of great ability.

Q. How was he during all this time as to wealth and responsibility?

A. During all this time he was a man of considerable wealth, and his credit was of the highest.

JOHN C. GREEN.

Subscribed and sworn to before me this 22d day of June, 1870.
JOSEPH GUTMAN, JR.,
Examiner, &c.

JOHN MCKEON, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to
201 testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. O'Conor, of counsel for defendants, deposes and says as follows:

I reside in the city of New York, and am a counsellor at law. I have resided in New York since my infancy. I began to study law at the age of 15 with Radcliff & Mason, in the city of New York, at No. 11 Pine st.—it was about the year 1823. The firm consisted of Peter W. Radcliffe and John L. Mason, both of whom are now deceased. I was intimately acquainted with Mr. Radcliffe, both as a boy and as a man. My acquaintance continued till the time of his death. I have represented this part of the country in the State legislature and in Congress. I was several years in each, and have also been the State district attorney for this district, and the United States district attorney for this district.

Q. What was the character and standing of Peter W. Radcliffe, as a citizen and as a lawyer, in respect to morality and attentiveness to business in his charge, and as to professional learning?

A. It is difficult for me to convey in any terms my idea of the
202 integrity and professional learning of Peter W. Radcliffe. As a man he was beyond all suspicion; as to integrity as a lawyer, he was one of the most exact and painstaking men that I ever knew. I never knew a more conscientious man in my life; and if a man may be

allowed to refer to such a thing, he struck me as a sincere religious man. I know how much I feel indebted to him for the good advice and good example he gave me. And this character for integrity and professional learning which I have given him, was one that was accorded to him by his professional brethren of this whole community.

JOHN McKEON.

Subscribed and sworn to before me this 22d day of June, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

203 N. Y., *October* 22, 1870, 3 *p. m.*—Present counsel as before

U. S. circuit judge for the second circuit, the Honorable LEWIS B. WOODRUFF, called as a witness on the part of the defendant, having been duly sworn, being examined by Mr. O'Conor, counsel for defendants, deposes and says as follows:

1. Q. Were you formerly in practice in this city as an attorney and counsellor at law, and from what time to what time?

A. I was, from the fall of 1832 until the 1st of January, 1850, and again, afterwards, from January, 1862, until January, 1868.

I was acquainted with Mathew St. Clair Clarke, formerly of Washington City. I had a general acquaintance with the son and daughters of the late James R. Smith, of this city, father of Mrs. Janette Clark, and have seen her, but my acquaintance with her was limited to probably one or two casual interviews.

In the fall of 1843, the son of Mrs. Janette Clark, George A. De Clark, I think, by name, called upon me to obtain my professional ser-
204 vices in behalf of his mother, in the preparation of deeds, and bonds, and mortgages, and generally to superintend the closing of contracts of sale of lots in the eastern part of the city, which, as he informed me, had been made through Mr. Bleecker, as auctioneer, and by auction. He furnished me with the requisite information regarding the terms of sale, and the time when the purchasers were to receive their deeds, and I prepared the deeds, and, according to my best recollection, delivered them to him to take to Washington to be executed by his mother; and I have an impression, not very distinct, that Mathew St. Clair Clarke, as some trust relation which he bore, was also to execute them. The deeds were returned to me, and I think by Mr. George A. De Clark in person—at all events he was here on the day which had been appointed for the delivery of the deeds, and for the execution and delivery of such bonds and mortgages, as were to be delivered to him for her, on the day appointed. I think one or two of the purchasers came to my office, accepted the deeds, and did, on their part, whatever the contract required; but in the course of the day
205 Andrew Thompson, esq., who is now here present, called at my office and stated that he had been employed by one *other* purchasers to examine the title to the property, and that he had doubts of the validity of *of* the title which Mrs. Clark proposed to convey, and assigned some reasons founded upon the will, as I recollect, of James R. Smith, her father, and the subsequent division or partition of the estate of James R. Smith, of which the lots to which I have referred formed a part, and my recollection is that he proposed some discussion, of the legal points involved, with me, as her counsel. As up to that time, I had never given any professional examination to the will or the history of the property, so far as I can now remember, I requested him not to act finally in the matter until I could examine the will, and the

interview with Mr. Thompson closed in that manner. I should add, however, that Mr. Thompson, at the same time stated that Stephen Cambreling, esq., had also been employed by one of the purchasers to examine the title, and Peter De Witt, esq., had been employed for the same purpose by another, and as he understood, each of those gentlemen would advise their clients not to complete the purchases, by reason of the same doubts which he entertained respect-
206 ing the title. Either by the aid of Mr. Clark or of Mr. Thompson, and in what precise mode I do not now remember, I was furnished with a copy of the will; and, after examining it, I had a further interview with Mr. Thompson in which I endeavored to satisfy him that the doubts which he had expressed, had no just foundation. I am not able to say that Mr. Thompson gave me an unqualified assurance, but I received the impression that if Mr. De Witt was satisfied he was so far persuaded by what I urged, or had such confidence in Mr. De Witt that he would be satisfied to have his client complete his purchase. I called upon Mr. De Witt, and he informed me that his doubts were such that he had already advised his client not to take the title. I stated to him my views of the subject as I had before to Mr. Thompson, and in the conversation with him, the fact that Mr. Clark, son of Mrs. Janette Clark, then passed the years of majority, was here in the city, was mentioned, as it may have before been mentioned to Mr. Thompson. The result of my conversation with Mr. De Witt was his declaring himself satisfied, that the views which I entertained of the title were correct and he said that his client would take the title, but he regretted that
207 his client had gone home, and, living out of the city, it could not be completed on that day; but, before giving that final decision, it was proposed that Mr. Clarke should execute an instrument, by way of release of any interest of his own or confirmation of the sale, the form I do not remember, which I said I presumed Mr. Clark would give without any hesitation. During my interview with Mr. De Witt, Mr. Thompson came into Mr. De Witt's office, and took part in the conversation and discussion there; and, according to my recollection, concluded, as did Mr. De Witt, that, upon the procurement of such release or grant from Mr. Clarke, his client also would complete his purchase. I am not able to remember, at present, whether Mr. Clark was present in my office during my interviw with Mr. Thompson, and I do not recollect that he was with me at Mr. De Witt's office, nor do I recollect conversing with Mr. Thompson at my office about Mr. Clarke; but, either through his presence at such or some of those interviews, or by direct and immediate communication from me, he was informed of the objection made in behalf of the purchasers by their counsel, and that they desired the execution by him of the release or grant of which I have spoken;
208 and, by his direction, I prepared three instruments, one for each parcel sold to the clients of the three professional gentlemen I have named, to effect the purpose which I have stated. The form of instrument I find characterized in an entry which I made, at that time, pertaining to the transaction, as "grants." I have no other means before me of describing the instruments of which I have spoken. I am led to beleive and do beleive that the first day of December, 1843, was the day appointed for the delivery of the deeds, by the fact that, on that day, I was paid for two bonds and mortgages given back by the purchasers, P. Pinckney and Quimby Kipp, who I suppose to be the parties who accepted conveyances without raising any questions as to the title. My intercourse with Mr. Clarke on the subject appears to have closed on the 4th of December when he paid me for drawing five deeds and three

grants, together with a small fee for my advice and service in the matter.

I had no interviews regarding this transaction with any one, in New York, representing Mrs. Janette Clark, excepting her son George A. De Clarke. Although I am not positive, the impression on my
209 mind is strong that, when he first called upon me to assist him in the matter, he brought a letter from Mathew St. Clair Clarke, asking me to give my attention to the business, but, on that point, I am not positive; and, if such a letter was written, I do not know where it is, it is so long ago. I have the impression that the giving of these releases or grants was more of a matter for their private satisfaction than anything else—that they wanted some reason to assign why they retracted their previous advice to their clients. My impression is that it was not designed to record them.

Q. In your interviews and conversations with Mr. George A. De Clark, was or was not the will of James R. Smith, his grandfather, alluded to, and its contents and nature spoken of?

A. My recollection is that the objection of these professional gentlemen and the grounds thereof were explained to him, and that necessarily involued the will of his grandfather. If he was present, the points of the will were examined and gone into with some particularity. If he was not present, I must have stated and explained to him that it was from something arising under the will that they wanted these papers called grants. Wherever I have spoken of Mr. Clarke,
210 I intended to designate and did mean George A. De Clarke. Wherever I have referred to Mathew St. Clair Clark, I have done so by name.

Q. In your various interviews with Mr. George A. De Clarke, did you discover any evidence of his being imbecile of mind or of weak intelligence so as to create a doubt whether he was less competent than ordinary persons to understand affairs and business?

A. Not at all. No such thought ever occurred to me, nor was there anything in his appearance, manners, or conversation to suggest any such idea. I mean to answer that in the fullest manner possible.

And being cross-examined by Mr. Janin, the witness deposes and says:

I had no other business transactions with George A. De Clark, except that one. I do not, at this time, recall any other interview with him. I may have seen him, however, more than once. That I had no other business transaction with him I am confident. My impression is that the question discussed between Mr. Thompson, Mr. De Witt, and
211 myself was whether Janette Clarke took an estate in fee; or whether her death without issue would devolve the title upon her brother and sisters or their issue, and, connected with that, whether on the birth of issue, which issue should attain 21 years, her estate became absolute; whether it was so before or not, and hence, whether if she had issue then living who was 21 years of age, whether his conveyance would not remove all chance of doubt. I speak wholly from my recollection. To what extent the history of the conveyances by which Mrs. Janette Clark became the owner in severalty of the several lots came into discussion, I do not remember, but the fact that she had come to own in severalty or claimed so to own must have been before our minds. I have no distinct recollection that the instruments by which the partition was effected were specially mentioned.

Q. Had you, at that time, seen any of those instruments effecting the partition among the heirs?

A. If by the question it is intended to inquire whether I had seen the original, I feel able to say with considerable confidence, though not with positive certainty, that I had not; but I had for a considerable
212 period acted as counsel for Mrs. Julia Smith, the widow of James C. R. Smith, brother of Mrs. Janette Clarke, and had, I think, before this time, effected sales of a portion of the same estate (which in the partition had fallen to him, James C. R. Smith,) for the benefit of his widow and children. In my acquaintance with the affairs of James C. R. Smith, and in the examination of transactions between him and Robert Dyson, I had acquired some general knowledge of the administration of the estate of James R. Smith, and I think was aware of the manner in which the property had been partitioned among his children, either by examining abstracts of title or by examining conveyances on record—I am not sure which, but, as I have already stated, I had paid no especial attention to the construction of the will with a view to any argument or opinion thereon. I have no recollection that George A. D. Clarke made any opposition or objection to the execution of these grants when it was proposed to him. I remember that he was much gratified by the closing of the transaction. I do not recollect that
213 he ever said he had any individual claim to the lots in question. I presume I explained the matter to him when he was asked to execute the grants, or he may have been present at the interviews with the counsel making objections. I told him of the objections the gentlemen had made. I do not remember whether he produced the will, or whether Mr. Thompson produced it. I know it was produced and was before us, and I examined it. I am not able to say whether the instrument itself was exhibited to Mr. Clark or not.

The witness desires to add:

I have stated somewhat more positively than I ought, (as on reflection it now occurs to me,) that I had no interview regarding the transaction with any one in New York, representing Mrs. Janette Clarke, excepting her said son. I have now no distinct recollection of any interview with any other person on her behalf, and yet there is a shadowy impression in my mind that after my first interview with him, I saw Mr. Bleecker in relation to some of the details of the auction sale and the terms. I desire further to add that I have been called to this examination without having seen the will of James R. Smith for a
214 considerable time, and not at all with reference to those inquiries, and without having referred to any papers connected with the subject, except my own memorandum of the dates of the payments which I have named, and I have therefore given my statements from recollection only.

L. B. WOODRUFF.

Subscribed and sworn to before me this 22d day of October, 1870.

JOSEPH GUTMAN, JR.,
Examiner.

ANDREW THOMPSON, counsellor at law, of the city of New York, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and being examined by Mr. O'Conor deposes and says:

I have been a practicing lawyer in the city of New York from 1838 to the present time.

Q. Were you at any and what time employed by any and what person or persons purchasing land in the city of New York, from
215 Mrs. Janette Clarke to search into and pass upon the title which she proposed to give? If so, please to relate the circumstances, so far as they brought you into any contact with Judge Woodruff, or Mr. George A. D. Clarke?

A. I was employed by Peter Pinckney to examine the title to some lots of land purchased by him at auction supposed to belong to Janette Clarke or her estate—the year I supposed to be 1843—I would not be perfectly positive without looking at some papers. There was a question in my mind as to a portion of that estate—the estate of the father of Janette Clarke, arising on his will, and to ascertain certain facts I called upon Judge Woodruff and had some conversation with him before the day on which the deed was to be delivered. On the day on which the deed was to be delivered I called at Judge Woodruff's office again. The judge was busy and in the meantime I commenced a conversation with Mr. George Wood. When the judge was at leasure I told him that I had advised my clients not to take the title unless
216 it could be shown at least that Janette Clarke had a child who had arrived at the age of twenty-one. Thereupon Judge Woodruff said she has a living child who has attained that age who is here present, and pointed out Mr. Clark without giving any other name except her son. This young gentleman stated that he was the son of Janette Clarke and was twenty-one years of age. I then stated that I would give it further consideration and left. On closing my office I called on Peter De Witt, and my impression is that, after a few words with Mr. De Witt, Judge Woodruff and this young man, Mr. Clarke, came in together. Before they came in I stated to Mr. De Witt that there was a child of Janette Clarke twenty-one years of age in the city, and asked him whether a properly executed paper or release from him would not make the title good either as the title vesting upon such an event happening or being a conveyance of the property had or should belong to this child which was said to be an only child. Mr. De Witt gave it as his opinion that it would, and would like to think more over it. Then Judge Woodruff came in with Mr. Clarke and introduced
217 young Mr. Clarke to Mr. De Witt. Mr. De Witt recollected the young gentleman's father, and thought he had some recollection of the young man when he was younger; and it was proposed there that the young man should execute a grant or release, as the case may be, and Mr. De Witt and myself agreed that would be satisfactory, and the young man agreed that he would execute it. I saw the young man again the next morning, I am not positive where, either at the register's office, De Witt's office, or Judge Woodruff's office. That day, I think, from two circumstances, was the 1st Dec., 1843. One of those circumstances was that the commissioner of deeds who took George A. D. Clark's acknowledgement was in my office and was a commissioner of deeds; and the other is that Peter Pinckney did not come down, to my knowledge, on the first day, but came on the day when the transaction was closed. The name of the commissioner was Addison M. Burt. The last I knew of him, a few months ago, he was in the city of New York. When I, and George A. D. Clark, and Judge Woodruff were present at De Witt's office, the whole matter of this objection was talked over in Mr. Clarke's presence by us. He was a participator in it.
218 He did not say much but looked a great deal. He was an intelligent and active participator in the conversation.

And being cross-examined by Mr. Janin, he deposes and says:

The will was not read to my knowledge at that conversation when Mr. Clarke was present. Extracts may have been. I had read the will before and had examined titles under it several times. I do not recollect that Mr. Clarke expressed any idea that he had any title to that property. It was expressed that he might in a certain event be entitled to it, but the idea was that the property vested in Janette when a child became of age, and we wanted proof that there was such a child.

Q. Were you in possession of any evidence showing how the title had been transmitted from the estate of James R. Smith to Janette Clarke in severalty?

A. I had examined the records for that purpose. There were no deeds shown to me, and I have the impression that there was a legal decision too on that question. There was no paper produced
219 by any person but the extracts that I had procured from the records. Extracts from the will, extracts from deeds, and I think, a legal decision or decisions. I aint sure of that but the others I am.

A. THOMPSON.

Subscribed & sworn to before me this 22d October, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

JOHN M. KNOX, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. O'Conor, deposes and says:

I am an attorney and counsellor at law, residing in the city of New York, and am one of the solicitors for the defendants in this cause.

Q. Are you an attorney and counsellor at law, and how long have you been so?

A. An attorney since 29 years last.

Q. Have you examined the certified copy of the deed to Peter Pinckney which was put in evidence before Commissioner Gutman, and
220 of the release or grant from George A. D. Clarke endorsed thereon, which was also put in evidence in the case before Commissioner Gutman?

A. I have.

Q. Have you examined the deed from Robert Dyson to Janette Clark, as set forth in the complaint in this cause, or the printed copy, page 16?

A. I have.

Q. Is or is not the property conveyed by the said deed to Peter Pinckney part of the premises described in the said deed to Janette Clarke?

A. It is a part thereof.

Q. Is or is not the property conveyed on the 29 of November, 1843, to George W. Martin, and by another deed of the same date conveyed to George W. Gillette (which said two deeds are marked L & K under a stipulation between the parties in this cause) part and parcel of the premises described last-mentioned deed, from Dyson to Janette Clarke?

A. It is.

JOHN M. KNOX.

Subscribed & sworn to before me this 22d October, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

221 Circuit court of the United States for the southern district of New York.

GEORGE AUGUSTUS CLARKE ET AL.
vs.
JAMES B. JOHNSON ET AL., EXECUTORS OF James Boorman, deceased. } In equity.

I, Joseph Gutman, jr., an examiner in equity and master in chancery, duly appointed in the circuit court of the United States, second circuit, do hereby certify that the foregoing are the depositions of the witnesses taken before me on the part of the defendants in the cause in the caption name', and that the exhibits thereto annexed are the documents which were exhibited to and deposed unto by the witnesses.

N. Y., Oct. 24, 1870.

JOSEPH GUTMAN, JR.,
Examiner, &c.

222 Know all men by these presents that I, George A. D. Clarke, of Cumberland, in the county of Cumberland, in the State of Maryland, only child of Mrs. Jeanet Clarke, in the *the* foregoing deed mentioned, for and in consideration of the money expressed in the said deed, and one dollar to me in hand paid by the said Peter Pinckney, in the said deed also mentioned, the receipt whereof is hereby acknowledged, have granted, bargained, and sold and conveyed, and by these presents do grant, bargain, sell, and convey to the said Peter Pinckney, and his heirs and assigns forever, the lot of ground and premises in the said foregoing deed described, and all my right, title, estate, and interest therein: To have and to hold the same unto him, the said Peter Pinckney, and his heirs and assigns forever. And I do hereby covenant, for myself and my heirs, to and with the said Peter Pinckney and his heirs and assigns, to warrant and defend the said premises unto him, the said Peter Pinckney and his heirs and assigns, against all and every person and persons lawfully claiming or to claim the same.

In witness whereof I have hereunto set my hand and seal this
223 first day of December, one thousand eight hundred and forty-three.

G. A. D. CLARKE. [L. S.]

In the presence of—
L. B. WOODRUFF.

STATE OF NEW YORK,
City & County of New York, ss:

On the first day of December, 1843, before me, came George A. D. Clarke, personally, and acknowledged that he executed the above conveyance; and at the same time appeared Lewis B. Woodruff, residing in the city of New York, who, being by me duly sworn, said that he knew the individual making the said acknowledgment to be the same person described in, and who executed, said conveyance, which is to me satisfatory evidence of the same.

ADDISON M. BURT,
Com. of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 1st day of May, A. D. 1855, at nine o'clock, min., a. m., in liber 681, of con's, page 257, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 17th day of June, 1870.

[SEAL.] MICHAEL CONNOLLY, *Register.*

224 (Endorsed:) Exhibit "Wetmore, No. 2," J. G. j'r, examiner. Geo. A. D. Clarke to Peter Pinckney.

225 This indenture, made the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Mathew St. Clair Clarke, of the city of Washington, in the District of Columbia, trustee for Jeanet Clarke, late of Green Castle, in the State of Pennsylvania, widow, and the said Jeanet Clarke, widow, as aforesaid, of the first part, and Peter Pinckney, of the city, county, and State of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand seven hundred and sixty dollars, ($1,760,) lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his
226 heirs and assigns forever, all that certain lot, piece, or parcel of ground situate, lying, and being on the southerly side of Stanton street, between Forsyth and Eldrige streets, in the city of New York, known and distinguis'ed as lot number 7, (seven,) in the subdivision of certain six lots, (to wit, numbers 1922, 1923, 1924, 1925, 1926, and 1927, on map or chart of the estate, late the property of James Delancey, esquire, made by Evert Bancker, commonly called map of Delancey's farm,) into nine equal lots between Forsyth and Eldrige streets, and fronting on Stanton street, which said lot number 7 (seven) hereby conveyed, begins on the southerly side of Stanton street, at a point distant one hundred and thirty-three feet and four inches easterly from the corner of Stanton and Forsyth streets, and sixty-six feet and eight inches westerly from the corner of Stanton and Eldridge streets, and runs thence easterly along the southerly side of Stanton street twenty-two feet two inches and two-thirds of an inch to lot number (8) eight, and thence southerly along lot number (8) eight, parallel with Eldridge street, seventy-five (75) feet; thence westerly parallel with street,
227 twenty-two feet two inches and two-thirds of an inch to lot number (6) six; and thence northerly along number lot (6) six, parallel with Forsyth street, seventy-five feet, to the place of beginning: Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same and

every part and parcel thereof, with the appurtenances, to have and to hold the above granted, bargained, and described premises with the appurtenances, and the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said parties hereto of the first part, for themselves and their heirs, executors, and administrators, do hereby, jointly and severally, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part or one of them, at the time of the sealing and delivery of these presents
228 are lawfully seized in their, his, or her right of a good, absolute, and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever. And also, that the said parties of the first part and their heirs, and all and every person or persons whom-
229 soever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore-granted premises by, from, under, or in trust for them or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, may do and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required; and the said parties hereto of the first part and their heirs, the above-described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and
230 every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR CLARKE, [L. S.]
Trustee of Jeanet Clarke.
JEANET CLARK. [L. S.]

Sealed and delivered in the presence of—(The name of the grantee, "Peter Pinckney," written on an era*sure* before signing.)
G. A. D. CLARK.
W. CRANCH.

231 DISTRICT OF COLUMBIA,
Washington County, ss:

Be it remembered that, on this twenty-ninth day of November, anno Domino one thousand eight hundred and forty-three, before William Cranch, chief judge of the circuit court of the United States in and for the District aforesaid, came Matthew St. Clair Clarke and Jeanet Clarke, to me personally known as the grantors named in the within indenture, and did severally acknowledge the said indenture to be their act and deed.

W. CRANCH.

STATE OF NEW YORK,
City & County of New York, ss:

On the second day of December, A. D. 1843, came before me personally George A. D. Clark, and being by me duly sworn, says that he resides at Cumberland, in the State of Maryland; that he saw Matthew St. Clair Clarke and Jeanet Clark execute the within conveyance; that he subscribed his name thereto as a witness, and that he knew the said Mathew St. Clair Clark and Jeanet Clarke to be the persons described in and who executed the said conveyance. And at the same
232 time appeared Lewis B. Wooodruff, residing in the city of New York, who, being by me duly sworn, says that he knows the said George A. D. Clarke to be the same person who was a subscribing witness to the within conveyance which is to me satisfactory evidence of the same.

ADDISON M. BURT,
Com'r of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 2d day of December, A. D. 1843, at 1 o'clock 25 min. p. m., in lib. 440 of cons., page 407, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 11th day of June, 1870.

[SEAL.] MICHAEL CONNOLLY, *Register.*

(Endorsed:) Mathew St. Clair Clarke to Peter Pinckney. Deed. Exhibit Wetmore, No 1.

233 (Endorsed:) United States circuit court for the southern district of N. Y. In equity. George Augustus Clarke et al. vs. James B. Johnston et al., executors, &c., of James Boorman, deceased. Defendant's proofs for final hearing taken before Joseph Gutman, j'r, examiner, &c. Wetmore.

234 Circuit court of the U. S. for southern district of New York.

GEORGE AUGUSTUS CLARKE ET AL.
vs.
JAMES B. JOHNSTON ET AL., EX'RS, &C., OF James Boorman, dec'd.

It is stipulated that the following papers may be read in evidence at the trial of this cause with the like effect as if the originals were produced

and proved; and a copy or copies of each are marked and endorsed by the solicitors of the parties respectively:

A. Bill of complaint—certified copy of—filed in court of chancery of the State of New York, January 28, 1842, in suit of Jeanet Clarke, complainant, against Robert Dyson, Dunbar S. Dyson, Mathew St. Clair Clarke, Anna Rhea Clarke, and Vigal Maxcy, defendants.

B. Copy of mortgage of Joseph Duncan & wife to Jeanet Clarke, James C. R. Smith, & others, dated 30 June, 1830, recorded in office of register of the city and county of New York, in lib. 139 of mortgage, page 566.

C. Copy of mortgage of Mathew St. Clair Clarke & wife to Jeanet Clarke, Joseph Duncan, & others, & wife, dated 10 July, 1830, recorded in said register's office, in liber 139 of mortgages, page 569.

235 D. Copy of mortgage of Jeanet Clarke to Matthew St. Clair Clarke & others, dated 10 July, 1830, recorded in said register's office, in liber 139 of mortgage, page 571.

E. Copy of satisfaction-piece of mortgage B, recorded in said register's office, in liber 4 of discharges of mortgages, page 558.

F. Copy of satisfaction-piece of mortgage C, recorded in said register's office, in liber 5 of discharges of mortgages, page 15.

G. Copy of satisfaction-piece of mortgage D, recorded in said register's office, in liber 5 of discharges of mortgages, page 16.

H, I, J, K, L. Copies of 5 deeds from Mathew St. Clair Clarke, trustee, and Jeanet Clarke, dated, severally, November 29, 1843, to , and recorded in said register's office as follows:

H, to Peter Pinckney,	lib. 440	conv's,	p. 407.
I, to do.	lib. 440	"	p. 409.
J. to Quimby Kipp,	lib. 440	"	p. 410.
K, to George W. Gillette,	lib. 441	"	p. 28.
L, to George W. Martin,	lib. 441	"	p. 30.

M. Copy of release from George D. A. Clarke to Peter Pinckney, dated Dec'r 1, 1843, recorded in said register's office, in lib. 681 of conveyances, page 257.

1. Exemplified copy record of will, codicil, and letters testamentary, of James R. Smith, dec'd, recorded in lib. 54, pp. 9 and 316 of wills.

236 2. The last will and testament of Mrs. Hannah Rodgers, dated July 12, 1821.

3. Jeanet Clarke to Mathew St. Clair Clarke, dated September 25, 1829. Power of attorney.

4. James Boorman and others to James C. R. Smith, dated November 15, 1829. Deed.

5. Robert Dyson to Matthew St. Clair Clarke and Anna R. Clarke, his wife, dated November 15th, 1829. Deed.

6. James Boorman, &c., executors, and Jeanet Clarke, &c., to Joseph Duncan, &c., dated November 15th, 1829. Deed.

7. James Boorman, &c., executors to Robert Dyson, dated November 15, 1829. Deed.

8. James Boorman, &c., executors, and James C. R. Smith, &c., to Jeanet Clarke, dated November 15, 1829. Deed.

9. James Boorman, &c., executors, and James C. R. Smith, &c., to Robert Dyson, dated November 15, 1829. Debt to Hannah Rogers' estate. Deed.

10. James Boorman, &c., executors, and James C. R. Smith, &c., to Joseph Duncan, dated November 15th, 1829. Deed.

237 11. James Boorman, &c., executors to Jeanet Clarke, dated November 15, 1829. $\frac{1}{3}$ of $\frac{1}{4}$.

12. James Boorman & others, to Ja's C. R Smith, dated November 15, 1829. Deed.

13. James Boorman, &c., to Joseph Duncan and wife, 15 Nov., 1829.

14. James Boorman, &c., to Robert Dyson, 26 Dec'r, 1829.

15. Robert Dyson to M. St. Clair Clarke and wife, 26 Dec'r, 1829.

16. Robert Dyson to Joseph Duncan & wife, 26 Dec'r, 1829.

17. M. St. Clair Clark, trustee, &c., to W. H. Leroy, dated January 2, 1835. Deed.

18. Jeanet Clarke to M. St. Clair Clarke, dated May 13, 1830. Deed.

19. Jeanet Clarke to W'm A. Coit, dated June 15, 1835. Deed.

20. Robert Dyson to Jeanet Clarke, 26 December, 1829. Recorded 28 December, 1830.

238 21. Matthew St. Clair Clarke and others, dated October 14th, 1835. Confirmation of Jeanet Clarke's sale to W'm A. Coit, of June 15, 1835. Deed.

22. James Boorman, &c., to Robert Dyson, 1st July, 1841. Recorded 5th August, 1841. Correction of description in deed of 15 Nov. 1829.

23. Jeanet Clarke to G. C. Dekay, dated December 29, 1845. Deed.

24. A certain pamphlet containing copy of bond of indemnity, M. St. Clair Clarke and others to James Boorman, which may be used as if the original was produced & proved.

25. Jeanet Clarke to M. St. Clair Clarke, dated July 13, 1830. Deed.

Dated New York, October 22d, 1870.

LOUIS JANIN,
Of Counsel for Pl'ff's.
KNOX & MASON,
Sol'rs for Def'ts.

239 (Endorsed:) U. S. circuit court. George A. Clarke & al., vs. James B. Johnston & al., executors, &c., of James Boorman, deceased. Stipulation as to papers to be read in evidence

240 In chancery.

To the chancellor of the State of New York.

Humbly complaining shows unto your honor, your oratrix Jeanet Clarke, of Washington, in the District of Columbia, widow of the Rev'd John X. Clarke, deceased, that James R. Smith, late of the city of New York, died on or about the fourth day of June, in the year of our Lord one thousand eight hundred and seventeen, leaving him surviving his wife, Hannah Smith, and four children, viz: James C. R. Smith, Anna Rhea Smith, since married to and now the wife of Mathew St. Clair Clarke, of Washington aforesaid; Jeanet Smith, your oratrix, since married to the Rev. John X. Clarke and now his widow, and Elizabeth C. Smith, since married to and now the wife of Joseph Duncan, lately governor of the State of Illinois.

And your oratrix further shows that the said James R. Smith was, at the time of his death, seized and possessed of a large amount of real estate and personal property in the city of New York; and that, on or about the first day of June, in the year 1817, the said James R

241 Smith duly executed his last will and testament, together with a codicil, thereunto annexed according to law, for the purpose of passing real and personal estate by which the said testator gave, devised, & bequeathed to his said wife, Hannah Smith, to her heirs and assigns forever, ten thousand dollars, to dispose of at her death as she might think proper, such bequest to be in lieu of all dower or right of dower of he said Hannah Smith in and upon the estate of the said James R.

Smith; and, after sundry other devises and bequests the said testator gave, devised, and bequeathed all the rest, residue, and remainder of his estate of every kind and nature whatsoever and wheresoever situate, to the executors of his said will in trust, that the same should be equally divided among his said four children, share and share alike, and their respective heirs; and the said testator further directed by his said will that his said daughter Jeanet, your oratrix, Hannah, and Elizabeth, if the latter should arrive at the age of twenty-one years, should have the privilege of expending and appropriating, by and with the consent of the executors, on' third-part of their portion of the estate therein de-
242 vised to them in such manner as they might think proper, and over which, when so appropriated, they should have absolute control, and that the remaining two-thirds of the portions or shares of his said daughters should be held seperate and distinct, and not liable to the control, debts, or engagements of either of their husbands which they then had or might thereafter have, as well those who were then married as she who might thereafter marry, giving, however, to the husbands of either or all of them in case the wife should die first, either with or without children, the income of said reserved part of the said testator arising from his wife's portion as long as the said husband should live, and after his death then it should go to the child or children of the said daughter of the testator so dying; and if either of the daughters of the said testator should die without lawful issue or having issue which should not attain the age of twenty-one years and without issue, then the share or portion of the said daughter after the death of her husband, or if there should be no husband living at her death, *and* should go
243 and be divided among the other children of the said testator, share and share alike, and to their issue share and share alike, in case of the death of either of them, such issue to take the portion that would have belonged to his, her, or their father or mother, as will more fully and at large appear by reference to the said will, and your oratrix prays leave to refer to a copy of the said will hereunto annexed and marked Schedule A, as a part of this, her bill.

And your oratrix further shows unto your honor that, in and by the said will, the testator appointed Andrew Forbes, John Thomson, James Boorman, his wife Hannah Smith, and Mathew St. Clair Clarke executors of the said last will and testament.

And your oratrix further shows unto your honor that, *that* the said will was duly proved, on or about the eleventh day of June, in the year of our Lord one thousand eight hundred and seventeen, and that letters were thereupon duly issued to the said Hannah Smith, as executrix, and John Thompson and James Boorman as executors thereof, and afterwards to said Mathew St. Clair Clarke.

And your oratrix further shows unto your honor that the said
244 Hannah Smith elected to accept the said provision made for her by the said last will and testament, in lieu of dower, and gave due and proper notice of such election, and that the said Hannah Smith duly released her dower in the said estate and became entitled to the said provision so made for her by the last will and testament aforesaid.

And your oratrix further shows unto your honor that the said Hannah Smith, the mother of your oratrix and the widow of the said James R. Smith, subsequently, and on or about the twenty-seventh day of November, one thousand eight hundred and nineteen, was lawfully joined in second marriage to one John R. B. Rodgers, of Newark, in the State of New Jersey; and that, previous to the said marriage and in contemplation thereof, a certain indenture was executed on or about the day

and year last aforesaid, by and between the said John R. B. Rodgers of the first part, the said Hannah Smith of the second part, and Robert S. Robertson of the third part, and under their respective hands and seals,

by which the said John R. B. Rodgers did covenant and agree to
245 and with the said parties of the second and third parts that, notwithstanding the said intended marriage and coverture of the said Hannah Smith, all the estate and property, real and personal, as well such as then belonged to the said Hannah Smith as any which might, if she were to remain unmarried, thereafter accrue to her or become subject to her disposition or control, should stand and remain and be accounted and taken as the estate of the said Hannah Smith, seperate and distinct from the estate of the said John R. B. Rodgers, and be in no wise liable or subject to his control and disposition, in the same manner as if the said marriage were not to take effect, and as if the said Hannah Smith were to remain sole and unmarried; and, also, that notwithstanding the said intended marriage and coverture, the said John R. B. Rodgers would permit the said Hannah Smith to give, grant, and dispose of her said seperate estate to any person or persons whomsoever, and also to make and execute any will or testament whatsoever, or any appointment testamentary, or instrument in writ-
246 ing in the nature of a will, ordering, devising, limiting, or appointing her said seperate estate, or any part thereof, including the aforesaid sum of ten thousand dollars, so given and bequeathed to her as aforesaid by the last will and testament of the said James R. Smith, to any person or persons whatsoever; and that he, the said John R. B. Rodgers, should and would permit *or* such will or instrument in nature of a will to be duly proved by the executors therein to be named, and probate thereof to be had as usual, and that the person or persons to whom the said Hannah Smith should give or dispose of any part of her said seperate estate, or the estate of the said James C. R. Smith, deceased, or of the aforesaid sum of ten thousand dollars, should, and lawfully might, peaceable and quietly have, hold, use, and occupy and enjoy the same according to the true intent and meaning of such gift, devise, or appointment, without any let, denial, hindrance, or interruption, of or from the said John R. B. Rodgers, his heirs, executors, or administrators, as by reference to the said indenture—and to which, for greater certainty, your oratrix craves leave to refer—will more fully and at large appear.

247 And your oratrix further shows unto your honor that the said Hannah Smith Rodgers, on or about the twelfth day of July, eighteen hundred and twenty-one, duly executed her last will and testament, according to law, and in such way as to pass real & personal estate, by which, after reciting the said will of James C. R. Smith and the said indenture aforesaid, the said Hannah Smith Rodgers, as to the said sum of ten thousand dollars, due from the estate of the said James C. R. Smith, after deducting therefrom several specific legacies, did direct that the residue of the said ten thousand dollars, after the payment of her debts, should be put out at interest, or otherwise invested, by her executors thereinafter named, in such manner that the interest or income thereof should be paid to her said husband, the said John R. B. Rodgers, for his own use during his natural life; that, after his death, the principal, with the interest thereon, should be divided and distributed equally between her children, your oratrix, Hannah R. Clarke, James C. R. Smith, and Elizabeth Smith, respectively, share and share alike; and in case of the death of any or either of them before the decease of her said husband, then that the share or shares of him,

her, or them so dying should be paid to his, her, or their children in equal shares.

Provided, that if, at the time of the decease of her said husband, your oratrix and her then husband should both be living, the share or portion of the said residue which, according to the said disposition or bequest thereof, would be payable to your oratrix, should be reserved by the said executors and put out at interest or otherwise invested in such manner that she, your oratrix, might receive the interest or income thereof during the life-time of your oratrix's said husband, for her own seperate use and benefit, and that the principal sum or fund should be paid to her immediately after his death.

All which will appear by the said last will and testament, which is hereunto annexed, marked Schedule B, and to which for greater certainty your oratrix craves leave to refer as part of this her bill.

And your oratrix further shows unto your honor that the said Hannah Smith Rodgers departed this life on or about the twentieth day of February, in the year one thousand eight hundred and twenty-five, and that the said last will and testament was duly proved as a will and testament to pass real and personal estate before the proper court in the county of Essex, in the State of New Jersey, and that, on or about the tenth day of March, in the year one thousand eight hundred and twenty-five, letters were duly issued thereon to Robert S. Robertson and Peter W. Radcliff, both of the city of New York.

And your oratrix further shows unto your honor that the said John R. B. Rogers departed this life on or about the day of , in the year of our Lord one thousand eight hundred and twenty-seven, and that the Rev. John X. Clarke departed this life on or about the thirteenth day of September, in the year one thousand eight hundred and twenty-four.

And your oratrix further shows unto your honor that, on or about the first day of October, in the year one thousand eight hundred and twenty-nine, an account was had and taken by and between the estate of the said James R. Smith and the estate of the said Hannah Smith Rogers, by which it appears that a large sum of money—about the sum of fourteen thousand six hundred and fifty-two dollars and twenty-two cents—was then due and owing by the estate of the said James R. Smith to the estate of the said Hannah Smith Rodgers, of which sum your oratrix was entitled to the fourth part, or about the sum of three thousand six hundred and sixty-three dollars and five cents, under and by virtue of the provisions of last will and testament of the said James R. Smith and of the said Hannah Smith Rodgers aforesaid.

And your oratrix further shows unto your honor that, on or about the thirty-first of October, in the year one thousand eight hundred and twenty-nine, a partition of the real estate belonging to the estate of the said James R. Smith took place at the city of New York, between James C. R. Smith, your oratrix, by her attorney, Mathew St. Clair Clarke, Joseph Duncan, for himself and wife; Mathew St. Clair Clarke, for himself and wife, Anna. And your oratrix craves leave to refer to the paper then executed and hereunto annexed, marked Schedule C, as part of this her bill.

And your oratrix further shows unto your honor that, by the said agreement, it was declared that the sums due and owing to your oratrix and the said Anna Clarke, under the will of the said Hannah Rodgers, as specified, should be paid by the transfer of certain lots, being part of the said estate of the said James R. Smith, and the said lots were received as such payment.

251 And your oratrix further shows unto your honor that, by virtue of the said partition and agreement aforesaid, the property in the city of New York, known as the John Kerr lots, numbers 25, 26, 57, 4, 18, 2, & 3, were conveyed to your oratrix in fee as the one-third of the share due to her under the will of the said James R. Smith; that certain other lots in the same city, and also part of the said estate of the said James R. Smith, known as John Kerr lots, numbers 7, 31, 34, 50, 102, 51, 56, 70, 71, 81, 82, 95, 96, 101, were also conveyed to your oratrix in fee as the two-thirds of the share due your oratrix under the last will and testament of the said James R. Smith; that certain other lots in the said city, being also part of the estate of the said James R. Smith, known as John Kerr lots, numbers 1, 11, 14, 15, 74, were also conveyed to your oratrix in fee as her share of the said debt due by the estate of the said James R. Smith to the estate of the said Hannah Rodgers.

And your oratrix further shows that the said property so conveyed to her was estimated at a large amount of money, viz, eight thousand dollars and upwards, or thereabouts, and that it was actually worth
252 that sum, or one yet larger, and that, by the conveyance thereof, the title to the same became absolutely vested in your oratrix in fee.

And your oratrix for a more accurate description of the said lots, prays leave to refer to the deeds & conveyance of the said property when the same shall be produced and proved.

And your oratrix further shows unto your honor that, by virtue of the partition aforesaid, and agreement aforesaid, a portion of the real estate belonging to the estate of the said James R. C. Smith, in the said city, known as John Kerr lots, No. 16, 13, 38, 105, 43, 44, 45, 46, were conveyed to the said Mathew St. Clair Clarke & Anna Rhea, his wife, in fee, as the one-third of the share of his said wife, in and under the will of the said James R. Smith; that certain other lots in said city, also parcel of said estate, and known as John Kerr lots, numbers 6, 12, 17, 20, 26, 29, 85, 86, 89, 80, 32, 48, 49, 63, 66, 67, 103, 104, were also conveyed to the said Mathew St. Clair Clark & Anna Rhea, his wife, in fee, as the two-thirds of the share of his said wife, in and under the will of the said James R. Smith; that certain other lots in said city, also parcel of said estate, known as John Kerr lots, numbers 62 & 90, were also conveyed to the said Mathew St. Clair Clark and Anna Rhea,
253 his wife, as the share of his said wife, in the said debt due from the said estate of the said James R. Smith, to the estate of the said Hannah Rodgers.

And your oratrix, for a more full and accurate description of the said property, prays leave to refer to the deeds conveying the same, when the same shall be produced and proved.

And your oratrix further shows unto your honor that the said property so conveyed to the said Mathew St. Clair Clark, and wife, as aforesaid, was worth a large sum of money, say about the sum of eight thousand dollars or thereabouts, and that the said property was actually worth that sum or one larger.

And your oratrix further shews unto your honor that, by the said conveyance, the title to the said last-named property became invested in the said Mathew St. Clair Clarke and his said wife, in fee.

And your oratrix further shews unto your honor that, in making the said partition of the said property, and in settling the accounts of the estates of the said James R. Smith and Hannah Smith Rodgers, Robert Dyson, of the city of New York, merchant, acted as the
254 agent of the said Mathew St. Clair Clark, or of your oratrix, or of

the estate of the said James R. Smith generally, and that some, or many of the valuations of parcels of the property to the said estate were made by him, and that he was familiar and conversant with the interests of your oratrix and of the said Mathew St. Clair Clarke and Anna Rhea Clarke in and to the same.

And your oratrix further shews unto your honor that, on or about the first day of October, one thousand eight hundred and twenty-nine, your oratrix was indebted to the said Mathew St. Clair Clarke, in the sum of two thousand two hundred & forty-one dollars and six cents for moneys before that time advanced to her by the said Mathew St. Clair Clarke, as appeared by the settlement then had between your oratrix and the said Mathew St. Clair Clarke, and to which your oratrix craves leave to refer.

And your oratrix further shews that she has, for many years past, been an invalid in a very great degree, and so as to render it almost, if not quite, impossible for her to attend to any business whatever, and that she was desirous to place her property out of her own hands for the purpose of relieving herself from all trouble and fatigue in the
255 management of it; that she had perfect confidence in the said Mathew St. Clair Clarke, her brother-in-law, and selected him for that purpose.

And your oratrix further shews unto your honor that, on or about the thirteenth day of May, in the year of our Lord one thousand eight hundred and thirty, in consideration of the foregoing indebtedness, and also of one dollar paid to your oratrix by the said Mathew St. Clair Clarke, and also to carry into effect the wish of your oratrix, as already stated, your oratrix, by an indenture, under her hand and seal, conveyed to the said Mathew St. Clair Clarke, all and every part of the estate of your oratrix whether real, personal, or mixed, arising out of the estate of her late father, the said James R. Smith, or her mother, the late Hannah Rodgers, wherever the same might be, & in whatsoever manner holden or claimed, and whether reduced into possession or not, all which estate it was thereby declared would fully appear by the settlement of the heirs of the said James R. Smith and the said Hannah Smith Rodgers, made in October, one thousand eight hundred and twenty-nine. In trust, to sell and dispose of the same or any part thereof as
256 the said Mathew might think fit, and in his own name as trustee, or in the name of your oratrix as he might choose, to make conveyances, releases, and acquittances therefor, including general warranty-deeds, or to rent and lease the same or any part, and to collect any monies due or becoming due, and to make deeds for lands sold previous to the date of said indenture, and to do all other acts necessary to the entire control, management, and disposal of said estate as your oratrix herself could do; and upon the further trust to pay himself the said sum of two thousand two hundred and forty-one dollars and six cents, with interest as aforesaid, either in money or by part of the real estate in the city of New York, conveyed to your oratrix as part of the estate of the mother of your oratrix, or out of the one-third part of her share of the estate of the father of your oratrix, conveyed to your oratrix by his executors, taking the same at the valuation made before the division of the said estate; and also, that the said Mathew St. Clair Clarke should appropriate the proceeds of the sales of the whole of the remainder, as your oratrix should direct, during her life-time, and in case of
257 your oratrix dying, leaving her son, George Augustus, living, under the age of twenty-one years, that then the proceeds (the said Mathew St. Clair Clarke not confining himself to the income or inter-

est where it should be in his opinion necessary) or so such as he might think proper should be expended on him, the said George Augustus, in his maintenance and education; and in case the said George Augustus should die before attaining the age of twenty-one years, and without leaving lawful issue living at his death, then the whole of the estate remaining held by your oratrix as one-third of the estate of the father of your oratrix and that held by your oratrix by the division of the estate of the mother of your oratrix, whether real estate or monies raised therefrom should be held in trust for the use and benefit of the sister of your oratrix, Anna Rhea Clarke, the wife of the said Mathew St. Clair Clarke and her children, with power of sale and appropriation as she might direct; and upon the further trust that, upon the like contingencies respecting your oratrix and said George Augustus, as above
258 mentioned, then the whole of the two-thirds of the estate of your oratrix, as designated in the said division and conveyed by deed to your oratrix by Robert Dyson as might remain undisposed of, should be disposed of by the said Mathew St. Clair Clarke, according to the tenor of the will of the father of your oratrix, the said James R. Smith, the said Mathew St. Clair Clarke not to be held responsible for any part or portion of said two-thirds, but such as should remain in his hands on the death of said George Augustus without issue as aforesaid, your oratrix, however, retaining the power, nevertheless, by deed to alter and change said last-mentioned trust of the remainder of two-thirds unexpended; and further, that for his care, trouble, and expenses, the said Mathew St. Clair Clarke might retain a reasonable compensation, if he pleased so to do.

And your oratrix further shows unto your honor that the said indenture was duly acknowledged and was recorded, at the request of the said Robert Dyson, in the office of the register of the city & county of New York, on the second day of October, eighteen hundred and
259 thirty, in liber No. 266 of conveyances, page No. 327, as will more fully and at large appear by the said original indenture or record thereof, and to which for greater certainty your oratrix craves leave to refer.

And your oratrix further shews unto your honor that, in pursuance of the said indenture, the said Mathew St. Clair Clarke elected to receive payment of the debt so due him as aforesaid out of the real estate of your oratrix, and your oratrix thereupon, and on or about the thirteenth day of July, eighteen hundred and thirty, by indenture, under her hand and seal, conveyed to the said Mathew St. Clair Clarke, certain premises in the city of New York, in full discharge of the said debt, which said premises were so received by the said Mathew St. Clair Clarke, as by reference to said indenture, on record in the office of the register of the city & county of New York, in liber 266 of conveyances, page No. 329, and to which for greater certainty your oratrix craves leave to refer, will more fully and at large appear.

And your oratrix shows that, in consequence thereof, the balance of the said premises so conveyed as aforesaid by the indenture
260 dated the 13 day of May, eighteen hundred and thirty, by your oratrix to the said Mathew St. Clair Clarke were altogether freed and discharged from the aforesaid indebtedness, and that all the property held by the said Mathew St. Clair Clarke was held absolutely free and clear of and from any claim of the said Mathew St. Clair Clarke; and in particular your oratrix distinctly charges that the John Kerr lots, so conveyed to your oratrix as aforesaid were entirely discharged from the debt aforesaid & were held by the said Mathew St. Clair Clarke as such trustee as aforesaid, solely for the benefit of your oratrix.

And your oratrix further shews unto your honor that, some time subsequent to the execution of the foregoing indenture and during the year 1865, the said Mathew St. Clair Clarke negotiated a sale of the said property in the city of New York, so conveyed to your oratrix and to the said Mathew St. Clair Clarke and his wife, as aforesaid, the said property having greatly risen in value; that the negotiations in regard thereto, were carried on through the said Robert Dyson, as the agent of the said Mathew St. Clair Clarke; and that, on or about the
261 twenty-seventh day of March, in the year aforesaid, the said Robert Dyson concluded a bargain with one William H. Le Roy.

And your oratrix further shows that the said property so conveyed consisted of two distinct parcels, one whereof belonged to your oratrix as aforesaid, and which was held by the said Mathew St. Clair Clarke in trust for her, and the other to the said Mathew St. Clarke and Anna Rhea, his wife.

And your oratrix further shows unto your honor that the property belonging to your oratrix consisted of the same lots conveyed to your oratrix as aforesaid, viz, the John Kerr lots 2, 3, 4, 7, 11, 14, 15, 18, 25, 31, 34, 50, 51, 56, 57, 70, 71, 74, 81, 82, 95, 96, 101, 102, and was conveyed by indenture made by and between the said Mathew St. Clair Clarke, in his own right, & as trustee of your oratrix of the first part, your oratrix of the second part, the said William H. Le Roy, of the third part, and that the actual consideration-money paid or secured to be paid thereon by the said William H. Le Roy, was the sum of thirty thousand dollars, as by reference to the said indenture now on record in the office of the register of the city and county of New York, in liber 326 of conveyances, page 399, will more fully and at
262 large appear, and to which your oratrix craves leave to refer when the same shall be produced.

And your oratrix expressly charges that the property conveyed thereby was the property of your oratrix in her own right, and held by the said Mathew St. Clair Clarke, in trust for her, and that the said Mathew St. Clair Clarke had no claim whatever thereupon.

And your oratrix further shows unto your honor that the indenture executed was, previous to the completion of the negotiation expressed, for a considerable space of time, in the hands of the said Robert Dyson, and that he well knew the fact that the property conveyed thereby was the property of your oratrix in part, and held by the said Mathew St. Clair Clarke, in trust for her.

And your oratrix further shows that the second parcel of the property so conveyed as aforesaid consisted of the same property so conveyed as aforesaid to the said Mathew St. Clair Clarke and his wife, viz, John Kerr lots 6, 12, 16, 17, 20, 26, 29, 32, 36, 43, 44, 45, 46, 48, 49, 62, 63, 66, 67, 80, 85, 86, 89, 90, 103, 104, 105, and was conveyed to the said William H. Le Roy by an indenture bearing date the second day of January, in the year one thousand eight hundred and thirty-five, by the said Mathew St. Clair Clarke and wife, the said Anna Rhea
263 Clarke, to the said William H. Le Roy; and that the purchase-money actually paid or secured to be paid was the sum of thirty thousand dollars, as by reference to the said indenture now on record in the office of the said register of the city and county of New York, in liber 326 of conveyances, page 404, and to which your oratrix craves leave to refer, will more fully and at large appear.

And your oratrix further shews unto your honor that, upon the purchase of the said property, the sum of ten thousand dollars was paid in cash by the said William H. Leroy to the said Robert Dyson, as the

est where it should be in his opinion necessary) or so such as he might think proper should be expended on him, the said George Augustus, in his maintenance and education; and in case the said George Augustus should die before attaining the age of twenty-one years, and without leaving lawful issue living at his death, then the whole of the estate remaining held by your oratrix as one-third of the estate of the father of your oratrix and that held by your oratrix by the division of the estate of the mother of your oratrix, whether real estate or monies raised therefrom should be held in trust for the use and benefit of the sister of your oratrix, Anna Rhea Clarke, the wife of the said Mathew St. Clair Clarke and her children, with power of sale and appropriation as she might direct; and upon the further trust that, upon the like contingencies respecting your oratrix and said George Augustus, as above
258 mentioned, then the whole of the two-thirds of the estate of your oratrix, as designated in the said division and conveyed by deed to your oratrix by Robert Dyson as might remain undisposed of, should be disposed of by the said Mathew St. Clair Clarke, according to the tenor of the will of the father of your oratrix, the said James R. Smith, the said Mathew St. Clair Clarke not to be held responsible for any part or portion of said two-thirds, but such as should remain in his hands on the death of said George Augustus without issue as aforesaid, your oratrix, however, retaining the power, nevertheless, by deed to alter and change said last-mentioned trust of the remainder of two-thirds unexpended; and further, that for his care, trouble, and expenses, the said Mathew St. Clair Clarke might retain a reasonable compensation, if he pleased so to do.

And your oratrix further shows unto your honor that the said indenture was duly acknowledged and was recorded, at the request of the said Robert Dyson, in the office of the register of the city & county of New York, on the second day of October, eighteen hundred and
259 thirty, in liber No. 266 of conveyances, page No. 327, as will more fully and at large appear by the said original indenture or record thereof, and to which for greater certainty your oratrix craves leave to refer.

And your oratrix further shews unto your honor that, in pursuance of the said indenture, the said Mathew St. Clair Clarke elected to receive payment of the debt so due him as aforesaid out of the real estate of your oratrix, and your oratrix thereupon, and on or about the thirteenth day of July, eighteen hundred and thirty, by indenture, under her hand and seal, conveyed to the said Mathew St. Clair Clarke, certain premises in the city of New York, in full discharge of the said debt, which said premises were so received by the said Mathew St. Clair Clarke, as by reference to said indenture, on record in the office of the register of the city & county of New York, in liber 266 of conveyances, page No. 329, and to which for greater certainty your oratrix craves leave to refer, will more fully and at large appear.

And your oratrix shows that, in consequence thereof, the balance of the said premises so conveyed as aforesaid by the indenture
260 dated the 13 day of May, eighteen hundred and thirty, by your oratrix to the said Mathew St. Clair Clarke were altogether freed and discharged from the aforesaid indebtedness, and that all the property held by the said Mathew St. Clair Clarke was held absolutely free and clear of and from any claim of the said Mathew St. Clair Clarke; and in particular your oratrix distinctly charges that the John Kerr lots, so conveyed to your oratrix as aforesaid were entirely discharged from the debt aforesaid & were held by the said Mathew St. Clair Clarke as such trustee as aforesaid, solely for the benefit of your oratrix.

And your oratrix further shews unto your honor that, some time subsequent to the execution of the foregoing indenture and during the year 1865, the said Mathew St. Clair Clarke negotiated a sale of the said property in the city of New York, so conveyed to your oratrix and to the said Mathew St. Clair Clarke and his wife, as aforesaid, the said property having greatly risen in value; that the negotiations in regard thereto, were carried on through the said Robert Dyson, as the agent of the said Mathew St. Clair Clarke; and that, on or about the
261 twenty-seventh day of March, in the year aforesaid, the said Robert Dyson concluded a bargain with one William H. Le Roy.

And your oratrix further shows that the said property so conveyed consisted of two distinct parcels, one whereof belonged to your oratrix as aforesaid, and which was held by the said Mathew St. Clair Clarke in trust for her, and the other to the said Mathew St. Clarke and Anna Rhea, his wife.

And your oratrix further shows unto your honor that the property belonging to your oratrix consisted of the same lots conveyed to your oratrix as aforesaid, viz, the John Kerr lots 2, 3, 4, 7, 11, 14, 15, 18, 25, 31, 34, 50, 51, 56, 57, 70, 71, 74, 81, 82, 95, 96, 101, 102, and was conveyed by indenture made by and between the said Mathew St. Clair Clarke, in his own right, & as trustee of your oratrix of the first part, your oratrix of the second part, the said William H. Le Roy, of the third part, and that the actual consideration-money paid or secured to be paid thereon by the said William H. Le Roy, was the sum of thirty thousand dollars, as by reference to the said indenture now on record in the office of the register of the city and county of New York, in liber 326 of conveyances, page 399, will more fully and at
262 large appear, and to which your oratrix craves leave to refer when the same shall be produced.

And your oratrix expressly charges that the property conveyed thereby was the property of your oratrix in her own right, and held by the said Mathew St. Clair Clarke, in trust for her, and that the said Mathew St. Clair Clarke had no claim whatever thereupon.

And your oratrix further shows unto your honor that the indenture executed was, previous to the completion of the negotiation expressed, for a considerable space of time, in the hands of the said Robert Dyson, and that he well knew the fact that the property conveyed thereby was the property of your oratrix in part, and held by the said Mathew St. Clair Clarke, in trust for her.

And your oratrix further shows that the second parcel of the property so conveyed as aforesaid consisted of the same property so conveyed as aforesaid to the said Mathew St. Clair Clarke and his wife, viz, John Kerr lots 6, 12, 16, 17, 20, 26, 29, 32, 36, 43, 44, 45, 46, 48, 49, 62, 63, 66, 67, 80, 85, 86, 89, 90, 103, 104, 105, and was conveyed to the said William H. Le Roy by an indenture bearing date the second day of January, in the year one thousand eight hundred and thirty-five, by the said Mathew St. Clair Clarke and wife, the said Anna Rhea
263 Clarke, to the said William H. Le Roy; and that the purchase-money actually paid or secured to be paid was the sum of thirty thousand dallars, as by reference to the said indenture now on record in the office of the said register of the city and county of New York, in liber 326 of conveyances, page 404, and to which your oratrix craves leave to refer, will more fully and at large appear.

And your oratrix further shews unto your honor that, upon the purchase of the said property, the sum of ten thousand dollars was paid in cash by the said William H. Leroy to the said Robert Dyson, as the

agent of the said Mathew St. Clair Clarke, and a mortgage was given on the said property by the said William H. Le Roy to the said Mathew St. Clair Clarke, to secure the sum of fifty thousand dollars; that the said mortgage was given to the said Robert Dyson, as such agent, as aforesaid, and recorded by him and at his request, as by reference to the said mo'tgage, now on record in the office of the register of the city and county of New York, in liber No. 178 of mortgages, page 457, and to which your oratrix craves leave to refer, will more fully and at large appear.

And your oratrix further shews that, altho' the said mortgage was given to the said Mathew St. Clair Clarke personally and in
264 his own name, yet the same was actually to the extent of twenty-five thousand dollars, in trust for your oratrix, and that your oratrix was interested to that extent therein absolutely.

And your oratrix further shews unto your honor that, as to the remainder of the said sum of fifty thousand dollars, the said mortgage was partly by the said Mathew St. Clair Clarke in his own right, viz, as to the one-third part thereof, representing the one-third of the share devised by the said last will and testament of the said James R. Smith to his daughter Anna Rhea Smith, and that, as the other two-third parts thereof, it was actually held by the said Mathew St. Clair Clarke, in trust for his said wife and for her benefit.

And your oratrix expressly charges that, as to the said part of the twenty-five thousand dollars, to which extent the said Mathew St. Clair Clarke held the sum in trust for her, it was not competent or proper for the said Mathew St. Clair Clarke to dispose of the same without the consent and approbation of your oratrix, and that the rights of your oratrix in the premises were well known in this respect to the said Robert Dyson.

And your oratrix further shews unto your honor that, in the year one thousand eight hundred and thirty-five, and for some
265 time previous, George W. Bruen, Harman Bruen, and John Bloodgood were, and had been, largely indebted to the Government of the United States for divers large sums of money due and owing to the said Government by the aforesaid parties.

And your oratrix further shows that, on or about the fifteenth day of May, eighteen hundred and thirty-five, Mathias Bruen, of Perth Amboy, & Alexander M. Bruen, by an instrument duly executed under their hands, appointed the said Mathew St. Clair Clarke their attorney, to effect a compromise of the said claims with the Secretary of the Treasury of the United States, and for that purpose authorized him, the said Mathew St. Clair Clarke, to sell or contract for the sale of about three hundred lots of ground in the city of New York, between *the* Seventeenth and Nineteenth streets, the First Avenue, and the East River, provided such sales should not be made for any amount less than what would be sufficient to effect a compromise of the said claims of the Government of the United States; and the said Mathew St. Clair Clarke was thereby authorized to retain whatever balance of the property should remain, after effecting the said compromise, as a reward
266 for his services in the matter, all which will appear by the said original instrument, a copy of which is hereunto annexed, marked D, and to which your oratrix craves leave to refer as a part of this, her bill.

And your oratrix further shews unto your honor that the said Mathew St. Clair Clarke, in pursuance of the powers conferred upon him by the said instrument, entered into negotiations with the Secre-

tary of the Treasury, and shortly effected a compromise of the said claims upon the payment of the sum of two hundred thousand dollars to the said Secretary of the Treasury.

And your oratrix further shows unto your honor that the said Mathew St. Clair Clarke, not being possessed of the said sum of two hundred thousand dollars to carry the said agreement into effect, and being very desirous to complete the same, and being satisfied that great pecuniary profit would result therefrom, entered into an agreement, under seal, with the said Robert Dyson, and his brother, Dunbar S. Dyson, who were then partners, doing business, as merchants, in the city of New York, under the name of R. & D. S Dyson, on or about the seventh day of July, in the year one thousand eight hundred and thirty-five, whereby it was agreed that the said Alexander M.
267 Bruen should convey to the said Dunbar S. Dyson the property described as aforesaid in *in* the power of attorney aforesaid; that the said Robert & Dunbar S. Dyson should pay the sum of two hundred thousand dollars to the United States of America, or satisfactorily secure the same to be paid; that the sum of twenty-five thousand dollars premium should be charged on the general fund to be raised out of the said lots, and that the said two hundred thousand dollars should then be repaid, with proper interest, and the remainder of the money or lots should be divided or holden, as the case might be, in the proportion of two-thirds to or by Mathew St. Clair Clarke, and one-third to or by said Robert & Dunbar S. Dyson; the said lots to be sold or disposed of as might thereafter be agreed on; that, by an additional agreement between the same parties, it was agreed that, out of the premium charged on the monies to be raised to pay the United States, the two hundred thousand dollars, to wit, the sum of twenty-five thousand dollars, the said Mathew St. Clair Clark should receive two-thirds, and the said Robert & Dunbar S. Dyson one-third, that being the proportion paid by them, as by said agreement and additional agreement will more fully and at large appear, and to true copies of which, here-
268 unto annexed and marked Schedule E, your oratrix craves leave to refer as part of this, her bill.

And your oratrix further shows that she is informed and believes, and therefore charges the fact to be, that the said agreement was entered into by the said Robert & Dunbar S. Dyson as partners and as partnership business; but that it was never contemplated by said agreement to form any partnership of any kind between the said Matthew St. Clair Clarke and the said Robert Dyson & Dunbar S. Dyson; nor that the said Matthew St. Clair Clarke should contribute any portion of the said sum of two hundred thousand dollars; but that the whole of said sum should be advanced by the said Robert Dyson & Dunbar S. Dyson, at their own risk and on the security of the lots, and that the premium and profits should be divided between them and the said Matthew St. Clair Clarke in the proportions aforesaid.

And your oratrix further shows unto your honor that, on or about the tenth day of March, the Honorable Virgil Maxey, now representative of the United States at the court of the King of the Belgians, became interested with the said Matthew St. Clair Clarke in the said undertaking; and that, on or about the day and year last aforesaid,
269 the said Matthew St. Clair Clarke executed, under his hand and seal, an instrument declaring that the said Virgil Maxey was equally interested with himself in the said bargain, and covenanting to pay over to the said Virgil Maxey one-half of the net proceeds of the said two thirds interest, or to convey to him one-half of the lots to be

set apart to him, the said Matthew St. Clair Clarke, or assign him the same proportion of bonds for lots sold, as by reference to the said instrument, which your oratrix craves leave to refer, will more fully and at large appear.

Your oratrix further shows unto your honor that, in order to enable the said compromise to be effected and as part of the said last-recited agreement, and on the said seventh day of July aforesaid, in the year one thousand eight hundred and thirty-five, the said Alexander M. Bruen, by George W. Bruen, his attorney, for that purpose duly constituted and appointed, executed to the said Dunbar S. Dyson a deed of conveyance of the said property, with full covenants, in which said conveyance the said property was described as follows, viz:

"All that certain tract, piece, or parcel of land situate, lying,
270 and being in the city of New York, between Seventeenth & Nineteenth streets and the First avenue and the East River, including the adjoining water-lot in the East River, and consisting of about three hundred city lots, be the same more or less, the said water-lot being inclusive, agreeably to a survey made in October, eighteen hundred and twenty-five, by Daniel Ewen, city-surveyor, and approved by R. Graves, street-commissioner, subject to their proportion of annuity, payable to the corporation of the city of New York, under a water grant, as will more fully appear by reference thereto had, bearing date 1st August, 1825, to John Flack & Nicholas Gouverneur, with such proportion and conditions as are therein contained," as by reference to the said deed, on record in the office of the register of the city and county of New York, in liber No. 335, page 563, and recorded the 15th day of July, 1835, will more fully and at large appear.

And your oratrix further shows unto your honor that, on or about the day and year last expressed, the said Mathias Bruen also executed a conveyance of all his right, title, and interest in and to the said premises, by a deed of full covenants, which said last-mentioned deed was
duly recorded in the office of the register of the city and county
271 of New York, in liber 337 of conveyances, page 479, the 15th day of August, 1835, and to which your oratrix, for greater certainty, craves leave to refer.

And your oratrix further shews unto your honor that the legal title unto the said premises thereby became fully and absolutely vested in the said Dunbar S. Dyson.

And your oratrix further shows unto your honor that the property was vested in Dunbar S. Dyson separately, merely for the sake of convenience, as at the time the said Dunbar S. Dyson was not married; but that the conveyance to him was made in pursuance of the aforesaid agreement and for the benefit of all the parties concerned therein.

And your oratrix further shows unto your honor that the said Robert Dyson & Dunbar S. Dyson, proceeded to carry the aforesaid agreement into effect on their part, by paying to the Treasury of the United States the said sum of two hundred thousand dollars. That they gave their obligations for that purpose in some form, of which the particulars are unknown by your oratrix; but that the said obligations became due,
respectively, on the fourteenth days of August, September, and
272 October, for 66,666 dollars and sixty-six cents, and were paid by the said Robert Dyson & Dunbar S. Dyson.

And your oratrix further shews unto your honor that the said Robert Dyson, & Dunbar, S. Dyson, soon began to find the liabilities under which they had come by reason of the said transactions very onerous;

that they could not sell the said lots, and applied to the said Mathew St. Clair Clarke, for assistance.

And your oratrix further shows unto your honor that, on or about the seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-five, the said Robert Dyson wrote a letter to the said Mathew St. Clair Clarke, in the words and figures following, to wit:

"NEW YORK, 17 *August*, 1835.

"MY DEAR SIR: I rec'd yours of 14th, from Baltimore to-day, and regret to find that you cannot accomplish a visit to this for ten days yet. Your presence for some days becomes daily more important, and I trust you will allow nothing to prevent your being here the moment the appointment of president of the company is fixed. The interdict to the change of the Bruen property which the conduct of the Treas-
273 ury has occasioned I severely feel, and, believing that a large profit would be realized upon a sale of the property, some time next month, I am the more anxious for your presence in order that old Bruen's own name may be given to the discharges to the Gov't, which seems to have been the plea for holding the papers in escrow. I paid, on the 14th, the first bond for $66,666.66. Some sales have been made within a few days, of some property on 8th st., ave. B, and about Tompkins square, which encourages me to hope an immediate good result to our speculation. The feverish state of our money m'k't frightens me at the fearful sum yet to be provided for, and you must stand ready to use the $50,000 mortgage and take the like upon the Bruen purchase, in case of need. I cannot leave town for a day, as I hourly expect the Scotland, and the Portsmouth will follow her soon after.

"All well.

"Yr's,

"R. DYSON.

"M. S. C. CLARKE, Esq."

To the original, of which said letter when produced, your oratrix for greater certainty craves leave to refer.

274 And your oratrix further shews unto your honor that, by the said letter, the said Robert Dyson referred and intended the mortgage so as aforesaid, executed by the said W. H. Le Roy, to the said Mathew St. Clair Clarke in trust for your oratrix, and intended to express a request that the said Mathew St. Clair Clarke should let them, the said Robert & Dunbar S. Dyson have the use of the said mortgage, and that the said Dunbar S. Dyson should execute a mortgage for a similar amount to the said Mathew St. Clair Clarke, to secure the said trust-fund.

And your oratrix expressly charges that she is informed and believes, and therefore avers the fact to be, that the said letter was written with the consent and approbation of the said Dunbar S. Dyson, or that he assented to the proposition contained therein subsequently.

And your oratrix further shews unto your honor that, shortly afterwards the said Mathew St. Clair Clarke proceeded to the city of New York; that there, as your orator is informed and believes, the said Robert Dyson and Dunbar S. Dyson, jointly and severally, urged him to
275 assist them in the said payments, and pressed him particularly to assign to them the said mortgage of fifty thousand dollars, on the aforesaid understanding that a mortgage of similar amount should be given on the said lots so conveyed to the said Dunbar S. Dyson by the said Alexander M. Bruen & Matthias Bruen, as aforesaid.

set apart to him, the said Matthew St. Clair Clarke, or assign him the same proportion of bonds for lots sold, as by reference to the said instrument, which your oratrix craves leave to refer, will more fully and at large appear.

Your oratrix further shows unto your honor that, in order to enable the said compromise to be effected and as part of the said last-recited agreement, and on the said seventh day of July aforesaid, in the year one thousand eight hundred and thirty-five, the said Alexander M. Bruen, by George W. Bruen, his attorney, for that purpose duly constituted and appointed, executed to the said Dunbar S. Dyson a deed of conveyance of the said property, with full covenants, in which said conveyance the said property was described as follows, viz:

"All that certain tract, piece, or parcel of land situate, lying,
270 and being in the city of New York, between Seventeenth & Nineteenth streets and the First avenue and the East River, including the adjoining water-lot in the East River, and consisting of about three hundred city lots, be the same more or less, the said water-lot being inclusive, agreeably to a survey made in October, eighteen hundred and twenty-five, by Daniel Ewen, city-surveyor, and approved by R. Graves, street-commissioner, subject to their proportion of annuity, payable to the corporation of the city of New York, under a water grant, as will more fully appear by reference thereto had, bearing date 1st August, 1825, to John Flack & Nicholas Gouverneur, with such proportion and conditions as are therein contained," as by reference to the said deed, on record in the office of the register of the city and county of New York, in liber No. 335, page 563, and recorded the 15th day of July, 1835, will more fully and at large appear.

And your oratrix further shows unto your honor that, on or about the day and year last expressed, the said Mathias Bruen also executed a conveyance of all his right, title, and interest in and to the said premises, by a deed of full covenants, which said last-mentioned deed was duly recorded in the office of the register of the city and county
271 of New York, in liber 337 of conveyances, page 479, the 15th day of August, 1835, and to which your oratrix, for greater certainty, craves leave to refer.

And your oratrix further shews unto your honor that the legal title unto the said premises thereby became fully and absolutely vested in the said Dunbar S. Dyson.

And your oratrix further shows unto your honor that the property was vested in Dunbar S. Dyson separately, merely for the sake of convenience, as at the time the said Dunbar S. Dyson was not married; but that the conveyance to him was made in pursuance of the aforesaid agreement and for the benefit of all the parties concerned therein.

And your oratrix further shows unto your honor that the said Robert Dyson & Dunbar S. Dyson, proceeded to carry the aforesaid agreement into effect on their part, by paying to the Treasury of the United States the said sum of two hundred thousand dollars. That they gave their obligations for that purpose in some form, of which the particulars are unknown by your oratrix; but that the said obligations became due, respectively, on the fourteenth days of August, September, and
272 October, for 66,666 dollars and sixty-six cents, and were paid by the said Robert Dyson & Dunbar S. Dyson.

And your oratrix further shews unto your honor that the said Robert Dyson, & Dunbar, S. Dyson, soon began to find the liabilities under which they had come by reason of the said transactions very onerous;

that they could not sell the said lots, and applied to the said Mathew St. Clair Clarke, for assistance.

And your oratrix further shows unto your honor that, on or about the seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-five, the said Robert Dyson wrote a letter to the said Mathew St. Clair Clarke, in the words and figures following, to wit:

"NEW YORK, 17 *August*, 1835.

"MY DEAR SIR: I rec'd yours of 14th, from Baltimore to-day, and regret to find that you cannot accomplish a visit to this for ten days yet. Your presence for some days becomes daily more important, and I trust you will allow nothing to prevent your being here the moment the appointment of president of the company is fixed. The interdict to the change of the Bruen property which the conduct of the Treas-
273 ury has occasioned I severely feel, and, believing that a large profit would be realized upon a sale of the property, some time next month, I am the more anxious for your presence in order that old Bruen's own name may be given to the discharges to the Gov't, which seems to have been the plea for holding the papers in escrow. I paid, on the 14th, the first bond for $66,666.66. Some sales have been made within a few days, of some property on 8th st., ave. B, and about Tompkins square, which encourages me to hope an immediate good result to our speculation. The feverish state of our money m'k't frightens me at the fearful sum yet to be provided for, and you must stand ready to use the $50,000 mortgage and take the like upon the Bruen purchase, in case of need. I cannot leave town for a day, as I hourly expect the Scotland, and the Portsmouth will follow her soon after.

"All well.

"Yr's,

"R. DYSON.

"M. S. C. CLARKE, Esq."

To the original, of which said letter when produced, your oratrix for greater certainty craves leave to refer.

274 And your oratrix further shews unto your honor that, by the said letter, the said Robert Dyson referred and intended the mortgage so as aforesaid, executed by the said W. H. Le Roy, to the said Mathew St. Clair Clarke in trust for your oratrix, and intended to express a request that the said Mathew St. Clair Clarke should let them, the said Robert & Dunbar S. Dyson have the use of the said mortgage, and that the said Dunbar S. Dyson should execute a mortgage for a similar amount to the said Mathew St. Clair Clarke, to secure the said trust-fund.

And your oratrix expressly charges that she is informed and believes, and therefore avers the fact to be, that the said letter was written with the consent and approbation of the said Dunbar S. Dyson, or that he assented to the proposition contained therein subsequently.

And your oratrix further shews unto your honor that, shortly afterwards the said Mathew St. Clair Clarke proceeded to the city of New York; that there, as your orator is informed and believes, the said Robert Dyson and Dunbar S. Dyson, jointly and severally, urged him to
275 assist them in the said payments, and pressed him particularly to assign to them the said mortgage of fifty thousand dollars, on the aforesaid understanding that a mortgage of similar amount should be given on the said lots so conveyed to the said Dunbar S. Dyson by the said Alexander M. Bruen & Matthias Bruen, as aforesaid.

set apart to him, the said Matthew St. Clair Clarke, or assign him the same proportion of bonds for lots sold, as by reference to the said instrument, which your oratrix craves leave to refer, will more fully and at large appear.

Your oratrix further shows unto your honor that, in order to enable the said compromise to be effected and as part of the said last-recited agreement, and on the said seventh day of July aforesaid, in the year one thousand eight hundred and thirty-five, the said Alexander M. Bruen, by George W. Bruen, his attorney, for that purpose duly constituted and appointed, executed to the said Dunbar S. Dyson a deed of conveyance of the said property, with full covenants, in which said conveyance the said property was described as follows, viz:

"All that certain tract, piece, or parcel of land situate, lying,
270 and being in the city of New York, between Seventeenth & Nineteenth streets and the First avenue and the East River, including the adjoining water-lot in the East River, and consisting of about three hundred city lots, be the same more or less, the said water-lot being inclusive, agreeably to a survey made in October, eighteen hundred and twenty-five, by Daniel Ewen, city-surveyor, and approved by R. Graves, street-commissioner, subject to their proportion of annuity, payable to the corporation of the city of New York, under a water grant, as will more fully appear by reference thereto had, bearing date 1st August, 1825, to John Flack & Nicholas Gouverneur, with such proportion and conditions as are therein contained," as by reference to the said deed, on record in the office of the register of the city and county of New York, in liber No. 335, page 563, and recorded the 15th day of July, 1835, will more fully and at large appear.

And your oratrix further shows unto your honor that, on or about the day and year last expressed, the said Mathias Bruen also executed a conveyance of all his right, title, and interest in and to the said premises, by a deed of full covenants, which said last-mentioned deed was
duly recorded in the office of the register of the city and county
271 of New York, in liber 337 of conveyances, page 479, the 15th day of August, 1835, and to which your oratrix, for greater certainty, craves leave to refer.

And your oratrix further shews unto your honor that the legal title unto the said premises thereby became fully and absolutely vested in the said Dunbar S. Dyson.

And your oratrix further shows unto your honor that the property was vested in Dunbar S. Dyson separately, merely for the sake of convenience, as at the time the said Dunbar S. Dyson was not married; but that the conveyance to him was made in pursuance of the aforesaid agreement and for the benefit of all the parties concerned therein.

And your oratrix further shows unto your honor that the said Robert Dyson & Dunbar S. Dyson, proceeded to carry the aforesaid agreement into effect on their part, by paying to the Treasury of the United States the said sum of two hundred thousand dollars. That they gave their obligations for that purpose in some form, of which the particulars are unknown by your oratrix; but that the said obligations became due,
respectively, on the fourteenth days of August, September, and
272 October, for 66,666 dollars and sixty-six cents, and were paid by the said Robert Dyson & Dunbar S. Dyson.

And your oratrix further shews unto your honor that the said Robert Dyson, & Dunbar, S. Dyson, soon began to find the liabilities under which they had come by reason of the said transactions very onerous;

that they could not sell the said lots, and applied to the said Mathew St. Clair Clarke, for assistance.

And your oratrix further shows unto your honor that, on or about the seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-five, the said Robert Dyson wrote a letter to the said Mathew St. Clair Clarke, in the words and figures following, to wit:

"NEW YORK, 17 *August*, 1835.

"MY DEAR SIR: I rec'd yours of 14th, from Baltimore to-day, and regret to find that you cannot accomplish a visit to this for ten days yet. Your presence for some days becomes daily more important, and I trust you will allow nothing to prevent your being here the moment the appointment of president of the company is fixed. The interdict to the change of the Bruen property which the conduct of the Treas-
273 ury has occasioned I severely feel, and, believing that a large profit would be realized upon a sale of the property, some time next month, I am the more anxious for your presence in order that old Bruen's own name may be given to the discharges to the Gov't, which seems to have been the plea for holding the papers in escrow. I paid, on the 14th, the first bond for $66,666.66. Some sales have been made within a few days, of some property on 8th st., ave. B, and about Tompkins square, which encourages me to hope an immediate good result to our speculation. The feverish state of our money m'k't frightens me at the fearful sum yet to be provided for, and you must stand ready to use the $50,000 mortgage and take the like upon the Bruen purchase, in case of need. I cannot leave town for a day, as I hourly expect the Scotland, and the Portsmouth will follow her soon after.

"All well.

"Yr's,

"R. DYSON.

"M. S. C. CLARKE, Esq."

To the original, of which said letter when produced, your oratrix for greater certainty craves leave to refer.

274 And your oratrix further shews unto your honor that, by the said letter, the said Robert Dyson referred and intended the mortgage so as aforesaid, executed by the said W. H. Le Roy, to the said Mathew St. Clair Clarke in trust for your oratrix, and intended to express a request that the said Mathew St. Clair Clarke should let them, the said Robert & Dunbar S. Dyson have the use of the said mortgage, and that the said Dunbar S. Dyson should execute a mortgage for a similar amount to the said Mathew St. Clair Clarke, to secure the said trust-fund.

And your oratrix expressly charges that she is informed and believes, and therefore avers the fact to be, that the said letter was written with the consent and approbation of the said Dunbar S. Dyson, or that he assented to the proposition contained therein subsequently.

And your oratrix further shews unto your honor that, shortly afterwards the said Mathew St. Clair Clarke proceeded to the city of New York; that there, as your orator is informed and believes, the said Robert Dyson and Dunbar S. Dyson, jointly and severally, urged him to
275 assist them in the said payments, and pressed him particularly to assign to them the said mortgage of fifty thousand dollars, on the aforesaid understanding that a mortgage of similar amount should be given on the said lots so conveyed to the said Dunbar S. Dyson by the said Alexander M. Bruen & Matthias Bruen, as aforesaid.

And your oratrix further shews unto your honor that, shortly afterwards, and on or about the thirteenth day of September, in the year last aforesaid, the said Mathew St. Clair Clarke yielded to the pressing solicitations of the said Robert Dyson & Dunbar S. Dyson, and executed an assignment of the said mortgage to the said Robert Dyson, as by reference to the said instrument of assignment, on record in the office of the register of the city and county of New York, in liber 192 of mortgages, page 179, will more fully and at large appear.

And your oratrix further shows that, on or about the twenty-first day of October, in the year aforesaid, the said Robert Dyson & Dunbar S. Dyson, one or both of them, made a negotiation for a loan of fifty thou-
sand dollars on the said mortgage, from the American Life In-
276 surance & Trust Comp'y, a corporation doing business in the city of New York. That the said Robert Dyson thereupon executed an assignment of the said mortgage to the said company, and received from them the sum of fifty thousand dollars, as by reference to the said indenture of assignment on record in the office of the register of the city and county of New York, liber 194 of mortgages, page 95, will more fully and at large appear.

And your oratrix further shows that, although the said assignments were made to and by the said Robert Dyson, individually, that the said transfer was made for the joint benefit of the said Robert Dyson & Dunbar S. Dyson; that they were equally interested therein; that they jointly received the said sum of fifty thousand dollars for their joint account and benefit; and if they shall pretend that they, the said Robert Dyson & Dunbar S. Dyson, did not receive the full amount of fifty thousand dollars, then your oratrix claims a full discovery as to what amount was received by the said Robert & Dunbar S. Dyson, and how the same was used or applied.

And your oratrix charges that the said assignment was made in
277 direct violation of the duty of the said Mathew St. Clair Clark, as the trustee of your oratrix; that your oratrix never in any way sanctioned, nor ever knew of the said assignment till long after the same was made; and your oratrix further charges that the said Robert Dyson and Dunbar S. Dyson, well knew that the said bond & mortgage were held by the said Mathew St. Clair Clarke, in trust for your oratrix, and that the same were assigned in violation of the rights of your oratrix, and in violation of the duty of the said Mathew St. Clair Clarke, and that in urging him to make such assignment, they were urging him to violate his duty as such trustee as aforesaid.

And your oratrix further shows that the said Mathew St. Clair Clarke did not immediately ask or require the said Dunbar S. Dyson to execute a mortgage as agreed upon, because, as your oratrix is informed and believes, the said Mathew St. Clair Clarke, expected from day to day a sale of the said lots or of a sufficient part thereof to re-imburse the said sum of fifty thousand dollars.

And your oratrix further shows unto your honor that, some
278 time, on or about the twenty-second day of November, in the year one thousand eight hundred and thirty-seven, the said Mathew St. Clair Clarke, applied to the said Robert Dyson & Dunbar S. Dyson for the said mortgage, but that they refused to execute the same and have ever since refused.

And your oratrix further shows that the said Mathew St. Clair Clarke has made repeated efforts to come to a settlement with the said Dunbar S. Dyson & Robert Dyson, but that all such efforts have resulted in nothing, as the said Dunbar S. Dyson & Robert Dyson have constantly

refused to execute the same mortgage or in any way to acknowledge the rights of your oratrix.

And your oratrix further shows that the said Robert Dyson & Dunbar S. Dyson have conveyed or mortgaged a large portion of the said property so conveyed to the said Dunbar S. Dyson, by the said Alexander M. Bruen and Matthias Bruen, to third parties, either for cash or in settlement of their debts, and your oratrix is apprehensive that, unless the said Dunbar S. Dyson is restrained from making any further conveyance or incumbrance of the said property he will put the whole thereof out of his reach and your oratrix will be remediless.

279 And your oratrix further charges that she is informed and believes and therefore charges the fact to be, that the said conveyances and mortgages made by the said Dunbar S. Dyson of and upon the said property are in great part if not altogether colorable and merely made to defeat the just claims of your oratrix, and other creditors of the said Robert & Dunbar S. Dyson.

And your oratrix well hoped that the said defendants would have complied with the reasonable request to execute the said mortgage, as in justice and equity they ought to have done. But now, so it is that the said Robert Dyson & Dunbar S. Dyson, combining and confederating with the said Mathew St. Clair Clarke, and Anna Rhea Clarke, and Virgil Maxey, and with divers other persons at present unknown to your oratrix, whose names, when discovered, your oratrix prays she may be at liberty to insert with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your oratrix in the premises, they the said Robert Dyson & Dunbar S. Dyson absolutely refused to comply with the request of your oratrix.

280 And your oratrix further charges that the said Mathew St. Clair Clarke ought to be removed from being the trustee of your oratrix, and that some other person ought to be appointed by this honorable court as such trustee in his place and stead—all which actings, doings, pretenses, & refusals are contrary to equity and good conscience and tend to the manifest wrong and injury of your oratrix in the premises.

In consideration thereof and forasmuch as your oratrix can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable—to the end therefore that the said Robert Dyson, Dunbar S. Dyson, Mathew St. Clair Clarke, Anna Rhea Clarke, Virgil Maxey, and the confederates when discovered, may upon their several and respective corporeal oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters expressed, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto; and more especially that the said

281 Robert Dyson & Dunbar S. Dyson may, in manner aforesaid, answer and set forth whether they were or not partners in business in 1835 & 1836, and when the said partnership was formed, and how long it has continued, and whether they did not, as such partners as aforesaid, enter into the aforesaid agreement with the said Mathew St. Clair Clarke, and whether the property so conveyed as aforesaid by the said Alexander M. Bruen and Mathias Bruen to the said Dunbar S. Dyson, on about the seventh day of July, in the year 1835, was not conveyed for the benefit of said Robert & Dunbar S. Dyson, and the said Mathew St. Clair Clarke for the purposes of the joint speculation aforesaid; and whether the request made by the said Robert S. Dyson

to the said Mathew St. Clair Clarke to assign the aforesaid mortgage from the said William H. Le Roy, was not made for the benefit of said Robert Dyson & Dunbar S. Dyson, and with the approbation and consent of both the members of the said firm; and whether the assignment of the said mortgage by the said Mathew St. Clair Clarke to the
282 said Robert Dyson was not made for the benefit of the said partnership of Robert & Dunbar S. Dyson; and whether the money received from the said American Life-Insurance and Trust Company was not received by and for the interest of the said partnership; and whether the said property so conveyed by the said Alexander M. Bruen and Mathias Bruen to the said Dunbar S. Dyson is not now vested in him, or if not, what conveyances, mortgages, or incumbrances thereof or of any part thereof have been made, and whether if such conveyances, mortgages, or incumbrances have been made, they were not merely colorable, and design*ge*d to defeat the just claims of your oratrix and other creditors of the said Robert & Dunbar S. Dyson therein, and that the said Robert & Dunbar S. Dyson may particularly set forth all such conveyances, mortgages, or incumbrances, or at least the date thereof, the parties thereto, the consideration actually paid or received, or the nature of the consideration, whether for debts due or otherwise, and the amount of such debts, so that it may precisely appear what is the extent of the incumbrances on the said property, when the same were
283 created and the consideration & nature thereof; and that the said Dunbar S. Dyson may be decreed to execute to your oratrix, or to some person on her behalf, a bond & mortgage on the property so conveyed to him as aforesaid, on or about the seventh day of July, in the year 1835, by the said Alexander M. Bruen and Mathias Bruen, or so much thereof as may be sufficient to secure the said sum of twenty-five thousand dollars so due to your oratrix as aforesaid with interest from the thirtieth day of September eighteen hundred and thirty-five; or that said Dunbar S. Dyson may be decreed to execute a bond & mortgage on the said property for the full amount of the said fifty thousand dollars, with interest as aforesaid, in which the interest of your oratrix shall be decreed to be one-half; and that in either case it be referred to a master to ascertain the value of the said property, and whether the said amount or any and what can be made secure thereon, and to determine what amount if any less that the whole would be a sufficient security for the said sum of money; and that on the coming in and confirmation of the said master's report, the said Robert
284 Dyson & Dunbar S. Dyson shall execute such conveyance as the said master shall direct:

And that if it shall appear that the said property has been so conveyed and mortgaged or incumbered that it is no longer, in part or in whole, a sufficient security for the entire sum due your oratrix, then that the said Dunbar S. Dyson be decreed to execute a bond and mortgage for such sum as by the report of the said master can be amply and adequately secured on the said property; and that they, the said Robert & Dunbar S. Dyson, be decreed to pay to your oratrix, or some proper person on her behalf, the full sum of twenty-five thousand dollars, or such balance as should remain over and above the said mortgage, with interest thereon from the last day on which interest was paid your oratrix upon the bond and mortgage so assigned as aforesaid by the said Mathew St. Clair Clarke to the said Robert Dyson, and that your oratrix have execution thereof; and that if the said Robert & Dunbar S. Dyson have not sufficient property to pay to your oratrix the said sum so declared payable by the master as aforesaid, then that the said Ma-

thew St. Clair Clarke be decreed to pay the same to your oratrix,
285 with interest as aforesaid; and that the said Mathew St. Clair Clarke be removed from his place and office as trustee, and that it be referred to the same master of this court to nominate and appoint a proper person in the place and stead of the said Mathew St. Clair Clarke as trustee for your oratrix:

And that the said Dunbar S. Dyson and Robert Dyson may be injoined from aliening, transferring, and mortgaging, and encumbering, or in any way charging the whole or any portion of the property conveyed by Alexander M. Bruen and Mathias Bruen to the said Dunbar S. Dyson by deeds bearing date the seventh day of July, 1835, or thereabouts; and that your oratrix may have such other or further and other relief in the premises as the nature of the circumstances of the case may require and to this court shall seem meet:

May it please your honor to grant unto your oratrix not only the people's writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said Robert Dyson & Dunbar S. Dyson, restraining and enjoining them as aforesaid, but also the people's writ of subpœna, to be directed to the said Robert Dyson, Dunbar S.
286 Dyson, Mathew St. Clair Clarke, Anna Rhea Clarke, & Virgil Maxey, thereby commanding them, at a certain day and under a certain pain, thereby to be limited, personally to be and appear before the vice-chancellor of the first circuit in this honorable court, and then and there full, true, direct, and perfect answers make to all & singular the premises; and further to stand to, perform, and abide such further direction and decree therein as to the said court shall seem meet.

And your oratrix shall ever pray.

JEANET CLARKE.

THEODORE SEDGWICK, *Sol'r.*
D. D. FIELD, *of Counsel.*

ALLEGANEY COUNTY, MARYLAND:

This twenty-second day of January, in the year of our Lord one thousand eight hundred and forty-two, personally appeared Jeanet Clarke, the above-named complainant, before me, and she was thereupon by me duly sworn that she has read the foregoing bill, and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be on her information and belief; and
287 as to those matters, she believes it to be true; and she then in my presence subscribed the said bill.

[L. S.] JOHN HAYS, *J. C. C.*
JOHN WOLFE, *J. P.*

STATE OF MARYLAND,
Allegany County, ss:

I, Asa Beall, clerk of Allegany County court, do hereby certify that John Wolfe, gentleman, before whom the foregoing affidavit appears to have been made, and whose name is thereto subscribed, was, at the time thereof, and still is, a justice of the peace of the said State in and for the county aforesaid, duly commissioned and sworn.

In testimony whereof I hereunto subscribe my name, and affix the seal of said court, this twenty-second day of January, 1842.

[L. S.] ASA BEALL,
Clerk of Allegany County Court, Maryland.

288 I, Daniel Blocher, register of wills, of Allegany County, Maryland, hereby certify that the said court is created by, and exists under, the laws of the State of Maryland; and I further certify that John Hays, esquire, is a judge and member of the said court, and that his signature attached to the foregoing certificate, is his true and genuine signature.

In witness whereof I have hereunto set my hand and affixed the seal of the said court this twenty-second day of January, in the year eighteen hundred and forty-two.

[L. S.] DANIEL BLOCHER,
Register of Wills, for Allegany County, M'd.

Provisions of the Statute.—(*Revised Statutes, 2d edit., vol.* 11, *p.* 317.

"In cases where, by law, the affidavit of any person residing in another State of the United States or in any foreign country, is required, or may be received, in judicial proceedings in this State, to entitle the same to be read, it must be authenticated, as follows:

289 "1. It must be certified by some judge of a court, having a seal; to have been subscribed and taken before him, specifying the time and place where taken.

"The genuine'ss of the signature of such judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under the seal thereof."

290 This is the last will and testament of James R. Smith, of the city of New York, merchant, made, altho' weak in body yet sound in mind, memory, and understanding, thanks be to God for all his mercies, through the merits and intercession of the Great Redeemer.

First. I desire that my body may be decently interred in the discretion of my executors hereinafter named.

Second. I do hereby authorize my executors, herein named and appointed, and the survivors and the survivor of them, or such other person or persons who may lawfully obtain the right to execute this my will, in their discretion to sell, in fee-simple or otherwise, according to the nature of the estate I may hold at the time of my decease, at public auction or at private sale, the whole or any part of my said estate, real or personal, and to execute and deliver good and sufficient deeds and conveyances in the law, for the same, to the purchaser or purchasers thereof, his or their heirs and assigns forever.

Third. Out of the proceeds of my said estate, after deducting all costs, charges, and expenses that my said executors may sustain or be put unto, my desire is that my said executors do pay, as soon as conven-

291 iently may be, all my just debts, funeral charges, and expenses, and the residue of my estate, unless the same or any part thereof shall be otherwise disposed of by codicil or codicils to this my last will and testament, I mean shall be distributed according to the laws of the State of New York, in the same manner as in case I happened to die intestate.

Lastly. I do hereby nominate, constitute, and appoint Andrew Foster, John Thompson, James Boorman, my wife Hannah Smith, and Mathew Saint Clair Clark, executors of this my last will and testament.

In testimony whereof, I have hereto set my hand this twenty-third day of January, one thousand eight hundred and seventeen.

JAMES R. SMITH. [L. S.]

Signed, published, and declared by the said James R. Smith, the testator, as for his last will and testament, in the presence of us, who, at

his request, and in his presence, and in the presence of each other, have hereto set our names as witnesses.

ROBERT FINLEY.
ROBERT B. E. MCLEOD.
ROBERT BLAKE.

This is a codicil to be added to the last will and testament of me, James R. Smith, of the city New York, merchant, which will
292 bears date on or about the twenty-third day of January last past.

First. I do hereby ratify and confirm my said will in all respects, except so far as any part thereof may or shall be revoked or altered by this present codicil; and, in addition to the powers granted in and to my said executors in relation to my said estate, I do hereby authorize them to lease the same estate or any part thereof, except such as shall otherwise be disposed of, in their discretion, and as they shall find the situation of my affairs require.

Second. I give, devise, and bequeath to my beloved wife, Hannah, all my real estate in the township of Newark, in the State of New Jersey, with all the rents, issues, and profits thereof, during her natural life, with full power and authority in her by her last will and testament to devise the same to all or any of our children in fee-simple, absolute; and with the further power and authority in her, by and with the consent *the consent* of the executors, to sell any and every part thereof, except the homestead, and to vest the proceeds thereof in funds for her further support during her natural life, having the same authority over said funds, to distribute them by her last will and testament,
293 as she has over the estate from which they may be created. But if she shou'd make her will in relation to said estate or the funds which may arise therefrom, then the said estate and the funds aforesaid, if created, shall go to and be enjoyed by our said children as tenants in common, share and share alike, and to the legal representatives of such of them as may happen to die before my said wife. Also, I give and bequeath to my said wife all my household goods and stores that may be on hand at the time of my decease, with all my farming and gardening tools or instruments, carriages, horses, cows, and beasts of every kind that I may be possessed of at the time of my death. Also, I do hereby direct my executors to invest as soon after my decease as conveniently may be, the sum of *sum of* twenty-five thousand
A. D. dollars ($25,000) in bonds secured by mortgage on real estate, or in stocks of the United States, or of the city or of the State of New
A. D. York, or some incorporated company in the State of New York or New Jersey, not connected with manufacturing business, as they, in their discretion, shall deem meet and prudent, and to alter and change the same into any other sur*i*ties of like description as often as they may deem meet and proper, and to pay the interest, produce,
294 and profits of such investment or so much thereof as she shall judge necessary to my said wife for her maint*ai*nance and support during her natural ; and, until such investment can conveniently be made, I do hereby direct my said executors to pay to my said wife, out of my estate, at and after, the sum of fifteen hundred dollars ($1,500) a year, in half-yearly payments; and I do hereby give, devise, and bequeath unto my said wife and to her heirs and assigns forever, ten thousand dollars, part of the aforesaid sum of twenty-five thousand dollars, ($25,000,) to dispose of at her death, as she may think proper, which provision shall be in lieu and bar of all dower and right of dower into or out of my estate, of every kind and nature.

Third. I do hereby direct that my said executors shall grant and convey in fee-simple or otherwise, according to the nature of my estate at the time of my death, the following lots, farms, tracts, peices or parcels of land, situate, lying, and being in the county of Ulster and State of New York, in the fifth allotment, in the subdivision No. 3, of great lot No. 6, of the Hardenburgh patent, namely, lots numbers
295 236, 265, 266, and 274, said to contain altogether about five hundred and thirty acres or thereabouts, to the ecorporation of the Scotch Presbyterian Church in Cedar street, in the city of New York.

Fourth. I do hereby direct my said executors to sell and convey, in fee-simple or otherwise, according to the nature of my estate at the time of my death, either at public or private sale, for the best price that can be had or obtained therefor, the following lots, farms, tracts, peices, or parcels of land, situate in the before-described great lot number six of the Hardenburgh patent, *patent*, namely, lots numbers 237, 238, 267, 272, said to contain altogether about five hundred thirty acres, or thereabouts, and to invest the proceeds thereof in the like securities for money as before described, and apply the income-product or profits thereof to the maint*ai*nance and education of poor and pious youths in the Theological Seminary of New York, created by and existing under the direction of the Associate Reformed Church, so long as the said seminary shall continue; and in case the said seminary
296 shall become incorporated, then *then* the said estate or the said securities may be transferred to the incorporation; and in case the said seminary shall cease to be so conducted, then the estate or securities are to be considered as part of my residuary estate.

Fifth. I do hereby direct my said executors to grant and convey, in fee-simple or otherwise, according to the nature of my estate at the time of my death, all the following lots, farms, tracts, peices, or parcels of land, situate in the before-described great lot No. 6 of the Hardenburgh patent, namely, *namely*, lots numbers 251, 262, 273, 275, said to contain five hundred and thirty acres, or thereabouts, to the corporation of the Scotch Presbyterian Church, in the city of New York, and their successors in trust, and upon the condition that the said corporation shall sell and dispose of the said land and invest the proceeds thereof in like securities as aforesaid, upon this further trust, that the income arising therefrom be laid out, under the direction of the minister, elders, and deacons of the said church, in fuel and provisions for the poor members of the church, in full communion; coffee, sugar, tea, and rice for those of them that are sick; and upon this further trust, that they purchase a permanent share in the city-dispensary to enable the said poor
297 members to have the benefits of the visits of the physician of the dispensary, and the said investment shall be called "The Lord's fund, for his poor people."

Fifth, No. 2. I do hereby direct my said executors to grant and convey, in fee-simple or otherwise, according to the nature of my estate at the time of my death, to my neice, Ann Washington Lind, the wife of the Rev'd John Lind, of Green Castle, Pennsylvania, the following lots of land, *lots of land* situate in the before-described great lot No. 6 of the Hardenburgh patent, namely, lots numbers 224 and 225, said to contain, together, two hundred and ninety-two and a half acres of land, or thereabouts; and in case of her death, to her children as tenants in common.

Sixth. I do hereby direct that my said executors shall grant and convey, in fee-simple or otherwise, according to the nature of my estate at the time of my death, to the two children of my nephew, Robert C.

Smith, by his wife, Hester Boorman, lot No. 223, situate in said great lot No. 6 of the Hardenburg patent, said to contain one hundred and forty-four acres of land; and also lot No. thirty-three (33) in township No. (6) six, in Watkin's & Flint purchase, in the county of Tioga,
298 in the State of New York, on condition that if either of them die, the survivor shall take the same; and in case of the death of both, or the survivor of them, before they shall attain the age of twenty-one years, and not leaving lawful issue, then the same to go to their mother Hester; and in case of her death also, then to my neice, Ann Washington Lind, and her heirs forever.

Seventh. I do hereby direct that my executors shall grant and convey in fee-simple to Sarah Vredenburg, the wife of the Rev'd John S. Vredenburg, of the State of New Jersey, lot No. 31, (thirty-one,) in township No. six, Watkin's and Flint's purchase, said to contain one hundred and thirty-seven and an half acres of land, which is situated in the county of Tioga, in the State of New York, and in case of her death then to her children, share and share alike, as tenants in common.

Eighth. I do hereby direct my executors, as soon after my decease as conveniently may be, to invest the sum of eight hundred dollars, in the like securities for money as before described, and to pay the income arising therefrom to Nancy Smith, the widow of my brother Dunbar Smith, deceased, during her natural life; after her death the said securities to be considered as part of my residuary estate.

Ninth. I give, devise, and bequeath to my sister, Margaret
299 Dyson, the wife of James Dyson, during their joint natural lives, and the survivor of them, the use, occupation, and enjoyment of the premises in Scotland, which they have occupied *have occupied* for many years past, and after the death of the said Margaret and James Dyson, then the same to be granted and conveyed by my executors to her children that may survive her, excepting George and Robert. And my further will is that such sum of money as shall be necessary to raise the annual sum of one hundred dollars shall be vested by my executors in the like securities, and that they pay the said sum of one hundred dollars to my said sister Margaret, yearly, and every year during her natural life, and after her decease the said principal sum shall be considered as part of my residuary estate.

Tenth. I give and bequeath to my nephew George Dyson, the sum of five hundred dollars, as an acknowledgment of his good conduct, and for his attentions to me during my last illness; and to my nephew Robert Dyson, I give and bequeath the sum of one thousand dollars, to be considered as in lieu of all services rendered to me by said Robert.

The said sums to be paid to them so soon after my decease, the
300 payment of my debts and the appropriations hereinbefore directed as conveniently may be.

Eleventh. I do further direct my executors to grant and convey in fee-simple or otherwise, according to the nature of my estate at the time of my death, the two following lots or parcels of ground, being lots Nos. 276 and 277 in the said great lot No. 6, of the Hardenburg patent, to the rest of the children of my said sister Margaret, as tenants, in common, share and share alike.

Twelfth. All the rest, residue and remainder of my estate of every kind and nature whatsoever and wheresoever situate, I give, devise, and bequeath unto my said executors in trust, that the same shall be equally divided to and amongst my four children, share and share alike, and to their respective heirs. My will further is that my son, James, and my daughter Elizabeth shall each have the sum of fifteen hundred

dollars set apart by my said executors, for their support and education until they arrive at the age of twenty-one, and if that sum shall not be found sufficient my executors shall take such further sum from their respective shares of my estate as shall be necessary. And I do hereby give the tuition, care, and guardianship of my said son, James, and my
301 daughter Elizabeth to my said wife. My will *my will* further is, that my son, James, shall not come to the full possession and enjoyment of his portion of my estate until he shall arrive at the age of twenty-five years, nor shall he have the power to pawn, pledge, mortgage, or dispose of it in any way, the same or any part thereof, before the expiration of that time, but shall be entitled to receive the income arising from his portion between the years of twenty-one and twenty-five. I further direct that my daughters, Jeanet, Hannah, and Elizabeth, if she should arrive at the age of twenty-one years, shall have the privilege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of my estate herein devised to them, in such manner as they may think proper, and over which when so appropriated they shall have absolute control; and the remaining two-thirds of the portions or shares of my daughters shall be held separate and distinct, and not liable to the control, debts, or engagements of either of their husbands which they now have or may hereafter have, as well those who are married as she who may hereafter marry, giving, however, to the husbands of either or all of
302 them in case the *in case the* wife shall die first, either with or without issue, the income of said reserved part of my estate as long as she shall live, arising from his wife's portion, and after his death then to the child or children of my said daughters so dying, and if either of my daughters shall die without lawful issue, or having issue which shall not attain the age of twenty-one years and without issue, then the share or portion of my said daughter after the death of her husband, or if there be no husband living at her death, shall go and be divided among my other children, share and share alike, and to their issue, in case of the death of either of them, share and share alike, such issue to take the portion that would have belonged to his, her, or their father or mother.

Lastly. And I do hereby authorize my said executors and the survivors or survivor of them, to carry into effect all legal and lawful contracts made by and with any of my agent or agents for the sale of any of my lands upon the terms and conditions agreed upon, or upon any other terms that may be agreed, and to give and good and sufficient conveyance or conveyances (*ances*) in the law to the purchaser or purchasers thereof; and I do hereby declare my will to be, that it
303 shall and may be lawful to and for my said executors to employ one or more agent or agents for the management of the concerns of my said estate, and the same, at their pleasure to dismiss and appoint others, and by and out of all and any of the money which may by virtue of this my will or any trust therein declared, come to their or any of their hands, to deduct, retain to, and re-imburse themselves all such reasonable costs, charges, and expenses, as they respectively shall or may sustain, expend, or be put unto, in or about the execution of this my will; and also, that my said executors, their respective heirs, executors, and administrators, shall be charged and charg'able only every of them for and with his or her own respective receipts and payments, acts, and wilful defaults, and not otherwise, and shall not be charged or charg'able with or for any sum or sums of money other than such as shall actually and respectively come to his, her, or their hands by virtue of this

my will, or for any loss or damages, which may happen in or about the execution of all or any of the trusts hereby in them *in them* reposed without his, her, or their wilfull default.

In witness whereof I have hereunto set my hand and seal this thirtieth day of May, in the year of our Lord one thousand eight hundred and seventeen.

304 MEMORANDUM.—I do further direct that my executors shall pay over, so soon after my decease, the payment of my debts, and the previous appropriations, as convenient, to the Orphan Asylum Society of the city of New York, and to the society for the relief of poor widows with small children, in the city of New York, each the sum of two hundred and fifty dollars, in trust, that the same shall be appropriated to the permanent funds of the respective societies.

[L. S.] JAMES R. SMITH.

Signed, sealed, published, and declared, by the said James R. Smith, the testator, as the codicil to his last will and testament, in the presence of us, who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

CATHERINE BAKER.
HANNAH BYERS.
ANTH'Y DEY.

305 SCHEDULE B.

In the name of God, Amen. Whereas, James R. Smith, late of the city of New York, merchant, the former husband of the subscriber, Hannah Rodgers, now the wife of John R. B. Rodgers, of Newark, in the State of New Jersey, physician, did, in and by a certain codicil to his last will and testament, duly made and executed by him, the said James R. Smith, among other things, give, devise, and bequeath unto me, the said Hannah, all his real estate in the township of Newark, in the State of New Jersey aforesaid, with all the rents, issues, and profits thereof, during my natural life, with full power and authority to me, by my last will and testament, to devise the same to all or any of our children in fee-simple absolute, and with the further power and authority to me, by and with the consent of the executors of the said will, to sell any and every part thereof except the homestead, and vest the proceeds thereof in funds for my further support during my natural life; with the same power or authority also to distribute such funds, by my last will and testament, as was given to or vested in me as aforesaid, in respect to devising the estate from which the said funds might arise or be produced; and did also give and bequeath unto me, the said Hannah, all his household goods and stores that might be on hand at the time
306 of his decease, with all his farming and gardening tools or implements, carriages, horses, cows, and beasts of every kind, and did moreover direct his executors to invest, as soon after his decease as conveniently might be, the sum of twenty-five thousand dollars in bonds, secured by mortgage on real estate, or in certain stocks in the said codicil mentioned, according to the discretion of the said executors, and to alter and change the same into any other securities of the like description as often as they should deem meet and proper, and to pay the interest, produce and profits of such investment, or so much thereof as I should judge necessary, to me, the said Hannah, for my maintenance and support during my natural life, and until such investment could conveniently be made, the said testator did, in and by the said codicil,

direct his said executors to pay to me, the said Hannah, out of his estate, at and after the rate of fifteen hundred dollars a year, in half-yearly payments; and did furthermore give, devise, and bequeath unto me, the said Hannah, and to my heirs and assigns forever, ten thousand dollars, part of the aforesaid sum of twenty-five thousand dollars, to dispose of at my death as I might think proper; which provisions should be in lieu and bar of all dower or right of dower in or out of his estate, of what kind or nature soever, as by the said codicil to the said last will
307 and testament, or the record thereof, in the office of the surrogate of the county of New York, reference being thereunto had, may, among other things, more fully and at large appear. And whereas the said James R. Smith having, in or about the month of June, in the year of our Lord one thousand eight hundred and seventeen, departed this life without altering or revoking any of the provisions in the said codicil to his will specified and declared, and I, the said Hannah, having elected to take, as a devisee and legatee under the said will and codicil; a marriage between me, the said Hannah, and the said John R. B Rodgers, was, on or about the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and nineteen, duly had and solemnized; and in the contemplation thereof and prior to the solemnization of the same, the said John R. B. Rodgers, in and by a certain indenture made between him, the said John R. B. Rodgers, of the first part, myself, the said Hannah Rodgers, (then Hannah Smith,) of the second part, and Robert S. Robertson, of the city of New York, merchant, of the third part, bearing date the day and year last mentioned, and duly executed under the hands and seals of the said parties respectively, did, among other things, covenant, promise, grant, and agree to and with the said Hannah and the said Robert S. Robertson, and
308 to and with each of us severally and respectively, and our and each of our executors and administrators, (in substance and effect,) that, notwithstanding such intended marriage and my subsequent coverture, all my estate and property, both real and personal, and as well such as already belonged to me as any which might, if I were to remain sole and unmarried, thereafter accrue to me or become subject to my disposition or control, excepting as therein particularly excepted and reserved, (but which exception or reservation did not extend to anything hereinafter mentioned or hereby intended to be affected or disposed of,) should stand and remain and be accounted and taken as my estate, separate and distinct from the estate of him, the said John R. B. Rodgers, and be in no wise liable or subject to him or the payment of his debts, but be and remain vested in and reserved to me and subject to my control and disposition, in the same manner as if the said intended marriage were not to take effect, and as if I were to remain sole and unmarried; and also that, notwithstanding the said marriage, then intended as aforesaid, and my subsequent coverture, he, the said John R. B. Rodgers, should and would permit and suffer me, the said Hannah, to give, grant, and dispose of my said separate estate to any person or persons whomsoever, and also to make and execute any will and testament
309 whatsoever, or any appointment testamentary, or instrument in writing in nature of a will, ordering, devising, limiting, or appointing my said separate estate or any part thereof, (including the aforesaid sum of ten thousand dollars given and bequeathed to me as aforesaid, to dispose of at my death, as beforementioned,) to any person or persons whatsoever; and that he the said John R. B. Rodgers should and would permit or suffer such will, or instrument in nature of a will, to be duly proved by the executors therein to be named, and probate

thereof to be had and taken as is usual in ordinary cases; and that the person or persons to whom I should give or dispose of any part of my said separate estate, or the estate of the said James R. Smith, deceased, or of the aforesaid sum of ten thousand dollars given and bequeathed to me as aforesaid, should, and lawfully might, peac'ably and quietly have, hold, use, occupy, and enjoy the same according to the true intent and meaning of such gift, devise, or appointment, without any let, denial, hindrance, or interruption of or from him the said John R. B. Rodgers, his heirs, executors, administrators, or assigns, or any of them, as in and by the said indenture, reference being thereunto had, may, among other things, more fully and at large appear.

310 Now, therefore, I, the said Hannah Rodgers, (late Hannah Smith, as before mentioned,) being in good health, and of sound and disposing mind and understanding, do, in virtue of the premises above recited or referred to, and of my own free will and accord make, ordain, and declare the following to be my last will and testament, as well of and concerning the property, estate, and effects given, devised, and bequeathed to me in and by the aforesaid codicil to the last will and testament of the said James R. Smith deceased, and the rights and interests thereby put at my disposal and subjected to my control, or intended so to be, as of and concerning my own individual property and effects of whatsoever kind or description, and from whatsoever source acquired or derived; that is to say—first, as to the aforesaid sum of ten thousand dollars in and by the said codicil to the last will and testament of the said James R. Smith, deceased, given and bequeathed to me as before-mentioned, in whatsoever form or state the same may exist, or howsoever it may be situated at the time of my death, I will order and direct that the same be paid, appropriated, and disposed of in manner following; that is to say, the sum of two hundred dollars (parcel thereof) to Hannah Vredenburgh, daughter

311 of the Reverend John S. Vredenburgh; the like sum of two hundred dollars (also parcel thereof) to Hannah Finley, daughter of the (late) Rev'd Dr. Robert Finley; the like sum of two hundred dollars (also parcel thereof) to Hannah Canfield, daughter of Mr. Isaac Canfield; and the like sum of two hundred dollars (also parcel thereof) to Hannah Caldwell, daughter of my brother, Josiah F. Caldwell; such payments to be made to the said Hannah Vredenburgh, Hannah Finley, Hannah Canfield, and Hannah Caldwell, respectively, for their own use and benefit, as soon as conveniently may be after my decease. And I hereby give and bequeath the same accordingly. And the residue of the said sum of ten thousand dollars, after applying or appropriating so much thereof as shall be necessary for the payment of my debts, to be put out at interest, or otherwise invested by my executors hereinafter named, in such manner that the income or interest thereof be paid to my said husband, the said John R. B. Rodgers, for his own use and benefit during his natural life, and that, after his death, the principal sum with the interest or income which shall thenceforward accrue on or arise from the same, be divided and distributed equally between my four children Jeanet Clarke, Hannah Clarke, James C. R.

312 Smith and Elizabeth Smith, respectively, share and share alike; and in case of the death of any or either of them before the decease of my said husband, then that the share or shares of him, her, or them so dying, be paid to his, her, or their child or children, if such child or children shall be then living, and if not, then to the survivors of such my children in equal shares. And I hereby give and bequeath the same accordingly:

Provided, always, that if, at the time of the decease of my said husband, my said daughter, Jeanet Clarke, and her present husband shall both be living, the share or portion of the said residue, which, according to the above disposition or bequest of the same would be payable to her my said daughter Jeanet, shall be reserved by my said executors and put out at interest, or otherwise invested in such manner that she, my said daughter, may receive the interest or income thereof during the life-time of her said husband, for her own separate use and benefit, and that the principal sum or fund be paid to her immediately after his death; or if she shall die in the life-time of her said husband, that the said principal sum or fund may thereupon be paid to such child or children if any, as she shall leave surviving her; and if she
313 shall not leave any child her surviving, may be paid to and distributed among my other children, which shall then be living, in equal shares, or (if any of them shall have previously died, leaving a child or children which shall still be living,) among such of my children before named as shall then be living, and the child or children (then surviving) of such of my said children as shall then be dead—the child or children of any deceased parent in such case taking (per stirpes) the share or portion which would have fallen to his or their parent if he or she had then been living.

Secondly. I give and bequeath to my said son, James C. R. Smith, the portraits of his father and myself, reserving, however, and hereby bequeathing the use and possession of my own to my husband, the said John R. B. Rogers, during his natural life. Thirdly. I give and bequeath my plate as follows, viz: My silver tankard, (which was my grandfather Ogden's,) and silver pitcher, to my son, James; my silver coffee-pot, tea-pot, new cream jug and sugar dish, two dozen tablespoons, two dozen des'ert-spoons, two dozen teaspoons, one soup-ladle, and two plated cake-baskets, to my daughter Elizabeth; and the residue of my said plate to my four children, Hannah, James, and
314 Elizabeth, to be divided between them as near as may be in equal shares, according to its value. Fourthly. I give and bequeath to my husband, the said John R. B. Rodgers, the use of my household and kitchen furniture and house linen, during his natural life; and, subject to such his right to use the same, I give and bequeath the same, and every part thereof to my four children before named, to be divided equally between them according to its value, share and share alike, and from and after his decease to be possessed and enjoyed by them, respectively, as their own individual and absolute property. Fifthly. My carriage, horses, cows, and farming-utensils I give and bequeath to my said husband, absolutely, and as his own individual property. Sixthly. I give, devise, and bequeath all the real estate in the township of Newark, in the State of New Jersey, whereof my late husband, the said James R. Smith, died seized or possessed, (and which in and by the aforesaid codicil to his last will and testament, he devised to me for life, with power and authority to me by my last will and testament to devise the same to all or any of his and my children in fee-simple, absolute, as hereinabove recited,) unto the before-named Jeanet Clarke, Hannah Clarke, James C. R. Smith, and Elizabeth Smith, the four children of the said James R. Smith and me the said Hannah Rodgers, (to be equally divided between them, share and
315 share alike, in fee-simple, absolute: To have and to hold the same and every part and parcel thereof, unto them, the said Jeanet Clarke, Hannah Clarke, James C. R. Smith, and Elizabeth Smith, their heirs and assigns, and to their only use, benefit, and behoof, forever, as

tenants in common, and not as joint tenants. Seventhly. All the rest and residue of my estate, of whatever kind or nature, and wheresoever found or situated, I give, devise, and bequeath unto my four children above named, to be equally divided between them, share and share alike: To have and to hold the same and every part and parcel thereof unto them and their respective heirs, executors, administrators, and assigns forever, as tenants in common, and not as joint tenants.

Lastly. I nominate and appoint my friends, Robert S. Robertson, of the city of New York, merchant, and Peter W. Radcliff, of the same place, counsellor at law, executors of this my last will and testament, hereby revoking and annulling all former wills and testaments by me made, and declaring this and no other to be my last will and tastament.

In witness whereof I have hereunto set my hand and seal this twelfth day of July, in the year of our Lord one thousand eight hundred and twenty one.

HANNAH RODGERS. [L. S.]

Signed, sealed, &c., &c., in the presence of three witnesses.

316 SCHEDULE C.

NEW YORK, 31 *Oct.*, 1829.

We, the subscribers, heirs and representatives of James R. Smith and Hannah Rodgers, late H. Smith, dec'd, having met at the above place, James C. R. Smith for himself; Jeanet Clarke, by attorney, duly constituted in writing, M. St. Clair Clarke; Joseph Duncan, for self and wife, Elizabeth; M't'w St. Clair Clarke for self and wife, Anna, all being of full age, and determined to avoid the sacrifice of our several estates, which would accrue on a sale of the whole by the executors of said James R. Smith, did agree and covenant with each other, as evidenced by our subscriptions hereto, to part, divide, and value the same estate, whereupon the lands not in the city of New York were valued, as appears by divers papers subscribed by us, and the lots of ground in the city of New York were valued by James Boorman, Thomas Suffern, and Robert Dyson, esquires, as per estimate signed by them and countersigned by us; and whereas, on settlement of our respective accounts for monies advanced from the estate of said James R. Smith, it appeared, as per accounts filed herewith, that Mrs. Jeanet Clarke had received, through M. St. Clair Clarke, for herself and husband, John X. Clarke, $2,935.40, which sum was charged to her
317 by M. St. Clair Clarke, by virtue of a sealed instrument of writing, dated 29th June, 1824, signed by said John X. Clarke and said Jeanet Clarke, and witnessed by David Fullerton and James Walker, in the following words, to wit:

"To MATHEW ST. CLAIR CLARKE,
"*Executor of James R. Smith, dec'd:*

"SIR: You are hereby authorized to retain in your hands so much as will satisfy you for all monies heretofore advanced for us, or which you may hereafter pay for us, and for so doing this shall be your authority, and for such purpose we bind ourselves our heirs, executors, and administrators, firmly by these presents, and sealed with our seals this 29th June, 1824.

(Sealed and signed.) "J. X. CLARKE.
"JEANET CLARKE."

And whereas the said J. C. R. Smith has received from said estate 8,677.24$, as per his account settled; M. St. Clair Clarke & wife had received, per account filed, $2,751.46, composed in part of monies advanced by his account with Jeanet Clarke, amounting to $2,241.06 and for which he and said Jeanet are to settle; and also of a charge against himself of $500 to meet any errors he may have made in crediting said estate and which is to be hereafter *to be* settled with them; and said Joseph Duncan & wife had received through M. St. Clair Clarke, $1,958.56, and through Robert Dyson and the executors, $756.66, making in all $2,714.22. These respective advancements formed the
318 basis of the calculations for each respective share.

Whereupon the said parties did proceed to divide the said estate by lot, each large portion of land being drawn for so as to equalize its parts, in quantity and value as nearly as possible to each party, those lands which had been sold and for which articles of sale were held by the respective agents being first divided as nearly equally as could be. The amount so parted and divided to J. C. R. Smith amounted to $20,592.24; to Jeanet Clarke, $20,787.77; to M. St. Clair Clarke & wife, $20,804.93, and to Joseph Duncan & wife, $20,532.42.

And whereas the estate of James R. Smith was indebted to the estate of Hannah Rogers, late H. Smith, widow of said James R. Smith, the sum of $14,652.22, making to each heir $3,663.05, and it was agreed upon that the said respective sums, coming to the daughters should be selected for, from the city property, the said selection by lot was made, for which the executors were to make them deeds, being their absolute property, and a like sum was drawn for by James C. R. Smith.

Whereupon the parties then proceeded as had been agreed upon to equalize the remainder of the city property, and James having rec'd in advance the sum as aforesaid drew $9,360 including Mrs. Rodgers'
319 debt making with his advancement, $18,037.84. Jeanet, besides her advancement, drew $15,235, making together, $18,170.40. M. St. Clair Clarke & his wife, besides their advancement, drew $15,280.00, making together, $18,041.47. Jos. Duncan & his wife, besides their advancement, drew $15,412, making together, $18,126.22, which several aggregate sums, being equalized by calculation of Robert Dyson, stand as follows: James to receive $56.14, Jeanet to pay $76.42, M. St. Clair Clarke & wife to receive $52.51, and Joseph Duncan & wife to pay $32.24.

And whereas, by the will of James R. Smith, the daughters were entitled to one-third part of their estate and the executors did agree to convey the same, the said daughters did select, part, and divide the said one-third and the executors did execute tripartite deeds therefor, as will fully appear by said deeds.

Whereupon for the remaining two-thirds the executors were to execute a deed to Robert Dyson and he was to make a deed back to the three daughters for their respective one-third of said two-thirds, and the heirs were all to enter into an indemnity bond to James Boorman to save him harmless on account of making the deed to Robert Dyson and James C. R. Smith; also to give M. St. Clair Clarke an indemnity bond to the same import, and Jeanet Clarke & Joseph Duncan &
320 wife to execute mortgages of certain city property to Mr. Boorman & Mr. Clarke as an indemnity to Mr. Clarke & further assurance to Mr. Boorman. The said mortgages to hold until the trust named in the will of James R. Smith, concerning the remaining two-thirds of

his daughters' portions shall have been legally extinguished or complied with.

M'W ST. CLAIR CLARKE.
J. C. R. SMITH.
JOSEPH DUNCAN.

SCHEDULE D.

Know all men by these presents that we, Matthias Bruen, of Perth Amboy, in the State of New Jersey, and Alexander M. Bruen, of the city of New York, for divers good causes and considerations us thereunto moving, have made and appointed and do hereby make and appoint Matthew St. Clair Clarke, of the city of Washington, our true and lawful attorney for us and in our names or either of them, to effect a comp'omise with the Secretary of the Treasury, of the judgments and claims of the United States against George W. Bruen, Herman Bruen and John Bloodgood, under the act of Congress passed on the fifteenth day of June,
321 1832, entitled "An act to authorize the Secretary of the Treasury with the trustee of the late firm of Thomas H. Smith & Son and their securities the claims of the United States upon the said firm and their securities," and, for that purpose, we both and each of us hereby authorize and empower him, the said Clarke, to treat with the said Secretary, and propose and agree to such modifications of the terms of compromise heretofore offered by Matthias Bruen in a letter addressed to the Secretary of the Treasury, in the month of February, 1835, or to substitute such other terms therefor as he, the said Clarke, may deem expedient; and we hereby authorize him in our names, or either of them and in our behalf, to sell, or make contracts for the sale, of all the lots of the Stuyvesant Association property, so called, as are contained between Seventeenth and Nineteenth streets, and the First avenue and East River, and to stipulate for the conveyance of the same by us or either of us, to the purchaser or purchasers, in fee-simple, clear of all incumbrances, by a good and sufficient deed or deeds, on such terms and conditions as he, the said Clarke, may deem expedient, and we further authorize him to receive the purchase-money and bonds or other obligations given therefor, and to dispose of them as he may judge best
322 for the accomplishment of the objects of this power of attorney, or if the said money or bonds should come to our hands or possession to hold and use them as he may direct for the accomplishment of the objects of this instrument: Provided always that in the exercise of the foregoing powers by our said attorney he shall not sell and dispose of, or stipulate, for us or either of us, to sell and convey said lots free and clear of incumbrances for a sum less than what may be sufficient to enable him, the said Clarke, to accomplish the compromise with the said Secretary of the Treasury, without any greater sacrifice or transfer of property, or release of claims for damages or surrender of certificates of debenture, than are proposed to be made by the said Matthias Bruen in his said letter to the Secretary of the Treasury. And we, the said Matthias Bruen and Alexander M. Bruen, both and each of us, covenant and agree, and bind ourselves, to and with our said attorney, the said Matthew St. Clair Clarke, that we will aid and facilitate his endeavors to accomplish the objects of this instrument, in all such ways and by all such means in our power, respectively, as will not cause a greater sacrifice than above mentioned, and for and in considera-
323 tion of his services in the premises to allow him, the said Clarke, to retain and appropriate to his own use whatever balance of

money, or bonds, or notes, or obligations may remain after a sufficient amount is used, or taken, or raised therefrom for the purpose of effecting the objects of this instrument and agreement, and whatever part of said balance may be in bonds, notes, or other obligations to assign our interest therein to said Clarke; and if such be necessary for the recovery of the same, we hereby, both and each of us, authorize him, the said Clarke, if he thinks fit, to use our names for the recovery of the same to his use: Provided always that our said attorney, the said Matthew St. Clair Clarke, shall be allowed one month from the date hereof to effect an agreement for a compromise with the Secretary of the Treasury; and if he shall not accomplish the same within that time, this instrument shall be null and void, and of no effect.

In witness whereof we have hereunto set our hands and seals this fifteenth day of May, eighteen hundred and thirty-five.

M. BRUEN. [L. S.]
ALEX'R M. BRUEN. [L. S.]

Witness: W. G. WOOD.

STATE OF NEW YORK,
City & County of New York, ss:

324 On the fifteenth day of May, one thousand eight hundred and thirty-five, before me, came Matthia' Bruen and Alexander M. Bruen, to me known to be the individuals described in and who executed the above letter of attorney, and they severally acknowledged that they executed the same.

W'M G. WOOD,
Commissioner of Deeds, N. York.

325 All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness, Albert Cardozo, justice, at the city of New York, the third day of October, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the ninety-fifth.

CHA'S E. LOEW, *Clerk.*

I, Albert Cardozo, presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby certify that Charles E. Leow, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, October 3d, 1870.

ALBERT CARDOZO,
Justice N. Y. Supreme C't.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State, in
326 and for the city and county of New York, do hereby certify that Albert Cardozo, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof, I have hereto set my hand and affixed the seal of the said court, this third day of Oct'r, 1870.

[L. S.] CHA'S E. LOEW, *Clk.*

[5-ct. int. rev. stamp, canceled.]

(Indorsed:) U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit A. Louis Janin, of counsel for complainant. Filed September 12, 1871.

327 This indenture, made this thirtieth day of June, anno Domini one thousand eight hundred and thirty, between Joseph Duncan and Elizabeth C. Duncan, late E. C. Smith, his wife, of Fountain Bluff, in the State of Illinois, of the first part, and Jeanet Clarke, Mathew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City, in the District of Columbia; and James C. R. Smith, of Newark, in the State of New Jersey, of the other part: Whereas, James R. Smith, late of the city of New York, in the State of New York, deceased, by his last will and testament and a codicil thereto annexed, did, after diverse devises to his daughters, order and provide as follows, to wit, and the remaining two-thirds of the portions or shares of my daughters shall be held separate and distinct and not liable to the contract debts or engagements of either of their husbands which they now have or may hereafter have, as well those who are married as she who may hereafter marry, giving however, to the husbands of either or all of them, in case the wife shall die first, either with or without issue, the income of said reserved part of my estate as long as he shall live, arising from his wife's portion, and after his death then to the child or children of my said daughter so dying. And if either of my daughters shall die without lawful issue or having issue which shall not attain the age of
328 twenty-one years and without issue, then the share or portion of my said daughter, after the death of her husband, or if there be no husband living at her death, shall go and be divided among my other children, share and share alike, and to their issue in case of the death of either of them, share and share alike, such issue to take the portion that would have belonged to his, her, or their father or mother.

And whereas, by mutual and universal agreement of all the parties interested, the whole of the said two-thirds of the real estate of the said James R. Smith, deceased, has been parted and divided, and by divers conveyances has been vested absolutely in the respective daughters and their heirs and assigns; and whereas, it is the wish and intention of the said parties of the first part that this indenture shall operate and be a security on the part of them, the said parties of the first part, for the faithful fulfilment of the provisions contained in the said recited portion of said will and testament and codicil: Now, therefore, this indenture witnesseth, that the said Joseph Duncan and Elizabeth C. Duncan, his wife, for and in consideration of the premises, and of the sum of ten thousand dollars, lawful money, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained,
329 and sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, release, convey, and confirm unto the said parties of the second part, all the lots, pieces, or parcels of ground in the said city of New York, following, to wit: Lot number (9) in the division of the estate of the said James R. Smith, deceased, by the heirs, being the corner of Stanton and Eldridge streets, fronting

twenty-two (22) feet two (2) inches on Stanton, and seventy-five (75) feet on Eldridge street; lot number eight, (8,) adjoining number (9) nine on the west, fronting twenty-two (22) feet two (2) inches on Forsyth street, and extending back seventy-five (75) feet; lot number (6) of said division, lying west of number seven, (7), belonging to Mrs. Jeanet Clarke, and east of number five, (5,) belonging to Matthew St. Clair Clarke, and lot number eight (8) of said divisior, and number six hundred and fifty-three, (653,) as known on the plan of the city, fronting twenty-five (25) feet on said Eldridge street, extending one hundred (100) feet deep, and adjoining the south end of lot number nine (9), on the corner of said Forsyth and Eldridge streets. Also, the following lots or subdivisions of the John Kerr lot, as laid out by George B. Smith, surveyor, to wit: lots numbers twenty-eight, (28,) thirty, (30,) thirty-five, (35,) fifty-two, (52,) fifty-three, (53,) and seventy-five, (75,) on Eighteenth (18th) street.

330 Also, lots number ninety-nine (99) and one hundred (100) of same division; fronting on Nineteenth (19th) street. Also, lots numbers (76) seventy-six and seventy-seven, (77,) fractional lots, lying back of lot number seventy-five, (75,) which have no front on any street. All of said lots, except the fractional lots, contain about twenty-five (25) feet front on the streets, and extend back one hundred (100) feet: To have and to hold all and singular the premises hereby granted and conveyed, with the buildings, improvements, hereditaments, and appurtenances thereunto belonging, unto the said parties of the second part, their heirs and assigns forever, to their only proper use and behoof forever: Provided, nevertheless, and it is the true intent and meaning of these presents, that in case the provisions contained in the said recited portion of the said last will and testament, and codicil, shall be fully and faithfully fulfilled on the part of the said parties of the first part, then, and from thenceforth, these presents, and every matter and thing therein contained shall cease and be utterly null and void, anything herein contained to the contrary thereof in any wise notwithstanding. The party grantors, however, retain the right to rent and lease said property for a period not exceeding twenty-one years.

331 In witness whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first above written.

JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of—(fourth line above being first interlined and codicil.)

M'W ST. CLAIR CLARKE.
W. CRANCH.

DISTICT OF COLUMBIA,
County of Washington, set:

Be it remembered that, on this first day of July, one thousand eight hundred and thirty, before me, William Cranch, chief judge of the circuit court of the United States for the District of Columbia, personally came Joseph Duncan, to me personally known as grantor in the above deed, and did acknowledge the same to be his act and deed. And at the same time came Elizabeth C. Duncan, wife of said Joseph, also personally known as party grantor, who did also acknowledge the same to be her act and deed, and being of full age, examined separate and apart from her said husband, and the contents of said instrument being

known to her, did declare that she did freely and voluntarily sign, seal, and as her act and deed deliver the same, without any coercion or compulsion of her said husband, or fear of his displeasure.

W. CRANCH.

Recorded the preceding, at the request of Rob't Dyson, the 2nd day of October, 1830, at 23 min. past 11 a. m.

JAMESON COX, *Register.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 2nd day of October, A. D. 1830, at 11 o'clock, 23 min. a. m., in liber 139 of mort's, page 566, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, this 18th day of October, 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

332 (Endorsed:) Duncan to Clark. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit B. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

333 This indenture, made this tenth day of July, anno Domini one thousand eight hundred and thirty, between Matthew St. Clair Clarke and Anna R. Clarke, his wife, of the city of Washington, of the *of the* one part, and Jeanet Clarke, of said city; James C. R. Smith, of Newark, in the State of New Jersey; and Joseph Duncan and Elizabeth C. Duncan, his wife, of Fountain Bluff, in the State of Illinois, of the other and second part:

Whereas James R. Smith, late of the city of New York, in the State of New York, deceased, did, by his will and testament, and a codicil thereto annexed, *did*, after divers devises to his daughters, order and provide as follows, to wit: And the remaining two-thirds of the portions or shares of my daughters shall be held seperate and distinct, and not liable to the contract debts or engagements of either of their husbands which they now have or may hereafter have, as well those who are married as she who may hereafter marry, giving, however, to the husbands of either or all of them, in case the wife should die first, either with or without issue, the income of said rese'ved part of my estate as long as he shall live, arising from his wife's portion, and
334 after his death then to the child or children of my said daughter so dying; and if either of my said daughters shall die without lawful issue, or haveing issue which shall not attain the age of twenty-one years, and without issue, then the share or portion of my said daughter, after the death of her husband, or if there be no husband living at her death, shall go and be divided among my other children, share and share alike, and to their issue in case of the death of either of them, share and share alike, such issue to take her portion that would have belonged to his, her, or their father or mother. And whereas, by mutual and universal agreement of all the parties interested, the whole of said two-thirds of the real estate of the said James R. Smith, deceased, has been parted and divided, and by divers conveyances has been vested absolutely in the respective daughters, and their heirs and assigns; And whereas it is the wish and intention of the parties of the first part, that this indenture shall operate and be a security on the part of them,

the said parties of the first part, for the faithful fulfilment of the provisions contained in the said recited portion of said will and testament and codicil:

Now, therefore, this indenture witnesseth: That the said Matthew St. Clair Clarke and Anna R. Clarke, his wife, for and in considera-
335 tion of the premises and of the sum of ten thousand dollars, lawful money, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents, to grant, bargain, and sell, alien, release, convey and confirm unto the said party of the second part, all the lots, pieces, or parcels of ground in the said city of New York, following, to wit: Lots numbered two, three, and five, in the subdivision of those lots of the estate of James R. Smith, fronting in Stanton street, and lying between Forsyth and Eldridge streets, each containing twenty-two feet two inches in front on Stanton, and being seventy-five feet deep. Also, lot number one in said subdivision on Forsyth street, and known on the plan of said city as lot numbered six hundred and fifty-two, begin'ing in the rear of the lots on Stanton street, being twenty-five feet front and rear, and one hundred feet deep. Also, in the subdivison of the great lot called "the John Kerr lot," between the fifth and sixth avenues; lots numbered sixty-three, fronting on Eighteenth street; number eighty, eighty-five, eighty-six, eighty-nine, and one hundred and three, fronting on
336 Nineteenth street, each being twenty-five feet in front and rear, and ninety-two feet deep. Also, fractional lots numbered twenty-nine and thirty-two, on Eighteenth street, twenty-five feet front each. Also, lots numbered one and seven, being about twenty-four feet ten inches, front and rear, and about two hundred and forty feet deep, being subdivisions of great lots numbered twenty-eight, and thirty-two, in the plan of said city, and lying between Twenty-sixth and Twenty-seventh streets: To have and to hold, all and singular, the premises hereby granted and conveyed, with the improvements, hereditaments, and appurtenances thereunto belonging unto the said parties of the second part, their heirs and assigns forever, to their only proper use and behoof forever.

Provided, nevertheless, and it is the true intent and meaning of these presents, that, in case the provisions contained in the said recited portion of the said last will and testament and codicil shall be fully and faithfully fulfilled on the part of the said parties of the first part, then and from thenceforth these presents, and every matter and thing therein contained, shall cease and be utterly null and void, anything herein contained to the contrary notwithstanding. The party grantors,
337 however, retain the right to rent and lease said property for any period not exceeding twenty-one years.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first aforesaid.

M'W ST. CLAIR CLARKE. [L. S.]
ANNA RHEA CLARKE. [L. S.]

Signed, sealed, and delivered in presence of—
NOAH FLETCHER.
W. CRANCH.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-first day of July, one thousand eight hundred and thirty, before me William Cranch, chief judge of the circuit court of the United States for said district, personally came Mathew St. Clair Clarke, personally known to me as party grantor, and did acknowledge the foregoing instrument to be his act and deed, and at the same time came Anna R. Clarke, his wife, also personally known to me as a party grantor, and being of full age, being by me examined, seperate and apart from her husband, and the contents of this deed being made known to her, did acknowledge the same to be her act and deed, and she did freely and voluntarily sign, seal, and deliver the same without any coertion or compulsion of her said husband or fear of his displeasure.

W. CRANCH.

Recorded the proceedings at the request of Robert Dyson, the 2d day of October, 1830, at 23 min. past 11 a. m.

JAMESON COX, *Register.*

338 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 2d day of October, A. D. 1830, at 11 o'clock, 23 min's, a. m., in liber 139 of Mortgages, page 569, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 18th day of October, 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

(Indorsed:) U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit C. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

339 This indenture, made this tenth day of July, anno Domini, one thousand eight hundred and thirty, between Jeanet Clarke, widow, of the city of Washington of the first part, and Mathew St. Clair Clarke and Anna R. Clarke, his wife, of said city; James C. R. Smith, of Newark, in the State of New Jersey; and Joseph Duncan and Elizabeth C. Duncan, his wife, of Fountain Bluff, in the State of Illinois, of the second part:

Whereas James R. Smith, late of the city of New York, deceased, by his last will and testament and codicil thereto annexed, did, after divers devises to his daughters order, and provide as follows, to wit: "And the remaining two thirds of the portions of or shares of my daughters, shall be held seperate and distinct and not liable to the contract debts or engagements of either of their husbands which they now have or may hereafter have, as well those who are married as she who may hereafter marry, giving, however, to the husbands of either or all of them in case the wife shall die first, either with or without issue, the income of said reserved part of my estate as long as he shall live, arising from his wife's portion, and after his death then to the child or children of said daughter so dying; and if either of my said daughters shall die without
340 lawful issue, or having issue which shall not attain the age of twenty-one years, and without issue, then the share or portion of my said daughter, after the death of her husband, or if there be no hus-

band living at her death, shall go and be divided among my other children, share and share alike, and to their issue in case *in case* of the death of either of them, share and share alike, such issue to take the portion that would have belonged to his, her, or their father or mother."

And whereas, by mutual and universal agreement of all the parties interested, the whole of the said two-thirds of the real estate of the said James R. Smith, deceased, has been parted and divided, and by divers conveyances has been vested absolutely in the respective daughters and their heirs and assigns;

And whereas, it is the wish and intention of the said party of the first part, that this indenture shall operate and be a security on the part of her, the said party of the first part, for the faithful fulfilment of the provisions contained in the said recited portion of said will and testament and codicil:

Now, therefore, this indenture witnesseth: That the said Jeanet Clarke, in accordance with the power retained by her in the deed of trust to Mathew St. Clair Clarke, dated the thirteenth day of May last, for, and in consideration of the premises
341 and of the sum of ten thousand dollars, lawful money, to her in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain and sell, alien, release, convey, and confirm unto the said parties of the second part all the lots, pieces, or parcels of ground in the said city of New York following, to wit: Lot number one, (1,) in the subdivision of the estate of the said James R. Smith, being the corner lot on Forsyth and Stanton streets, fronting on Stanton twenty-two feet two inches, and seventy-five feet back on Forsyth; lot number four in said subdivision, fronting on Stanton street twenty-two feet two inches; lot number seven in said subdivision, fronting as before, twenty-two feet two inches; also, lot number seven in said subdivision, on Eldridge street, (adjoining lot of Joseph Duncan & wife, numbered eight,) and known on the plan of said city as lot number six hundred and fifty-four, fronting twenty-five feet on Eldridge street, and running back one hundred feet. Also, the fol-
342 lowing lots in the subdivision of said estate of the John Kerr lot, lying between the Fifth and Sixth avenues, and on Seventee'th, Eighteenth, and Ninteenth streets, to wit: Number seven on Seventeenth street, containing about twenty-five feet front, and running back about ninety-two feet; number thirty-four, on Eighteenth street, being twenty-five front, a fractional lot, running back to the lines of Morewood and Clason; numbers fifty and fifty-one, being each twenty-five feet front, on Eighteenth street, and running back about ninety-two feet; numbers eighty-one and eighty-two on Nineteenth street, being twenty-five feet front, and running back about ninety-two feet towards Eighteenth street: To have and to hold, all and singular, the premises hereby granted and conveyed, with the appurtenances and improvements thereto belonging unto the said parties of the second part, their heirs, and assigns forever, to their only proper use, benefit, and behoof forever:

Provided, nevertheless, and it is the true intent and meaning of these presents, that, in case the provisions contained in the said recited portion of the said last will and testament and codicil shall be fully and
343 faithfully fulfilled on the part of the said party of the first part, or she shall be otherwise legally discharged therefrom, then and

from thenceforth these presents, and every matter and thing therein contained, shall cease and be utterly null and void, anything herein contained to the contrary notwithstanding. The grantor, however, retains the power of making leases of the said property not exceeding twenty-one years.

In testimony whereof the said first part hath hereto set her hand and seal.

JEANET CLARKE. [L. S.]

Witness' present at sealing and delivery:
NOAH FLETCHER.
W. CRANCH.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-first day of July, one thousand eight hundred and thirty, before me, William Cranch, chief judge of the circuit court of the United States for the district aforesaid, personally came Jeanet Clarke, to me personally known as the grantor in the aforegoing deed, and did acknowledge the same to be her act and deed, for the purposes therein named.

W. CRANCH.

344 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 2d day of October, A. D. 1830, at 11 o'clock 23 min's a. m., in liber 139 of mortgages, page 571, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 18th day of October, 1870.

MICHAEL CONNOLLY, *Register.*

(Endorsed:) U. S. district court. Clarke vs. Executors of Boorman. Exhibit D. Louis Janin, for plff's. Filed Sept. 12, 1871.

345 We, Jeanet Clarke, Matthew St. Clair Clarke, and Anna R. Clarke, of Washington City, District of Columbia, and James C. R. Smith, of Newark, in the State of New Jersey, do hereby certify that a mortgage, bearing date the thirtieth day of June, one thousand eight hundred and thirty, made and executed by Joseph Duncan, of Fountain Bluff, in the State of Illinois, and Elizabeth C., his wife, of the first part, to us of the second part, and recorded in the office of the register in and for the city and county of New York, in lib. 139 of mortgages, pages 566, 567, 568, &c., on the second day of October, A. D. 1830, is paid. Dated the twenty-eighth day of November, 1833.

JEANET CLARKE.
M'W ST. CLAIR CLARKE.
ANNA R. CLARKE.
J. C. R. SMITH.

Witness present:
HENRY L. CLARKE, as to J. C. R. Smith.

CITY & COUNTY OF NEW YORK, *ss:*

On the twenty-eighth day of November, one thousand eight hundred and thirty-three, before me came James C. R. Smith, to me known to be

one of the individuals described in and who executed the above certificate; and the said James C. R. Smith acknowledged that he executed the same.

HENRY L. CLARKE,
Com'r of Deeds.

WASHINGTON COUNTY, *District of Columbia:*

Be it remembered that, on the third day of December, anno
346 Domini eighteen hundred and thirty-three, before me, William Cranch, chief judge of the district court of the United States in and for said District, personally appeared the within-named Jeanet Clarke and Matthew St. Clair Clarke, to me personally known as party grantors, and did severally acknowledge the within instrument to be their act and deed; and at the same time came Anna R. Clarke, wife of said Matthew, to me also personally known as party grantors, and being by me examined, seperate and apart from her said husband, and the contents of the within instrument having been by reading made known to her, she did acknowledge the within instrument to be her act and deed, and that she did sign, seal, and deliver the same freely and voluntarily, without any coertion or compulsion of her said husband or from fear of his displeasure.

W. CRANCH.

347 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 19th day of January, A. D. 1835, at o'clock min., m., in lib. 4 of discharges of mort's, page 558, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed name and affixed my official seal this 20th day of Oct., 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

348 (Indorsed:) Joseph Duncan and Elizabeth C., his wife, to Jeanet Clarke, James C. R. Smith, and Matthew St. Clair Clarke and wife. Certified co. of satisfaction-peice of above mortg'. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit E. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

349 We, Jeanet Clarke, of Washington City; James C. R. Smith, of Newark of New Jersey; and Joseph Duncan, and Elizabeth C. Duncan, of Morgan County, in the State of Illinois, do hereby certify that a certain mortgage, bearing date the 10th day of July, 1830, made and executed by Mathew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City, of the first part, to us of the second part, and recorded in the office of the register in and for the city and county of New York, in liber 139 of mortgages, page 569, on the second day of October, 1830, is paid.

25 August, 1834.

JEANET CLARKE.
J. C. R. SMITH,
JOSEPH DUNCAN,
ELIZABETH C. DUNCAN.
JAMES McC. COLGATE.

Witness:
J. W. CANFIELD.
D. J. CANFIELD.

WASHINGTON COUNTY, *District of Columbia, ss:*

Be it remembered that, on this twenty-second day of January, eighteen hundred and thirty-five, before me, William Cranch, chief judge of the circuit court of the United States, in and for said district, came Jeanet Clarke, to me personally known as the party who signed the above and annexed release of mortgage, and did acknowledge the said release to be her act and deed.

W. CRANCH.

STATE OF NEW JERSEY, *ss:*

Personally appeared before me, Joseph C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, in the
350 said State, Dayton J. Canfield, of the county of Morris, in the said State, who is personally known to me, and who being duly sworn, on his oath saith: That he is personally acquainted with Joseph Duncan and Elizabeth C. Duncan, his wife, mentioned in and who have signed the foregoing and hereunto annexed certificate of release and discharge of a mortgage therein mentioned; that the said Joseph Duncan and his said wife, reside in the State of Illinois, and are not now in the State of New Jersey; and this deponent further saith that he saw the said Joseph Duncan & Elizabeth C. Duncan, his wife, severally sign their names to the said certificate, and heard them acknowledge the same to be their act for the purposes therein expressed; and that he, this deponent, and Isaac W. Canfield, the other subscribing witness, who also resides in the county of Morris aforesaid, severally subscribed their names as witnesses to the execution of the said instrument by the said Joseph Duncan and his said wife.

DAYTON J. CANFIELD.

Sworn to and subscribed before me, at Newark aforesaid, the 2d day of Feb'y, A. D. 1835.

JO'S C. HORNBLOWER.

NEW JERSEY, *ss:*

Personally appeared before me, Jo's C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, in the said
351 State, on this third day of February, A. D. eighteen hundred and thirty-five, James C. R. Smith, of the same place, personally known to me, and who, I am satisfied, is one of the persons named in the foregoing and hereunto annexed certificate of release of the mortgage therein mentioned, and acknowledged that he signed and delivered the same as his voluntary act for the purposes therein mentioned.

Witness my hand at Newark aforesaid, the day and year aforesaid.

JO'S C. HORNBLOWER.

OFFICE OF THE REGISTER OF DEEDS, &c.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 26th day of March, A. D. 1835, at o'clock min. m., liber 5 of discharges of mort's, page 15, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name, and affixed my official seal, this 20th day of Oct., 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

one of the individuals described in and who executed the above certificate; and the said James C. R. Smith acknowledged that he executed the same.

HENRY L. CLARKE,
Com'r of Deeds.

WASHINGTON COUNTY, *District of Columbia:*

346 Be it remembered that, on the third day of December, anno Domini eighteen hundred and thirty-three, before me, William Cranch, chief judge of the district court of the United States in and for said District, personally appeared the within-named Jeanet Clarke and Matthew St. Clair Clarke, to me personally known as party grantors, and did severally acknowledge the within instrument to be their act and deed; and at the same time came Anna R. Clarke, wife of said Matthew, to me also personally known as party grantors, and being by me examined, seperate and apart from her said husband, and the contents of the within instrument having been by reading made known to her, she did acknowledge the within instrument to be her act and deed, and that she did sign, seal, and deliver the same freely and voluntarily, without any coertion or compulsion of her said husband or from fear of his displeasure.

W. CRANCH.

347 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 19th day of January, A. D. 1855, at o'clock min., m., in lib. 4 of discharges of mort's, page 558, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed name and affixed my official seal this 20th day of Oct., 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

348 (Indorsed:) Joseph Duncan and Elizabeth C., his wife, to Jeanet Clarke, James C. R. Smith, and Matthew St. Clair Clarke and wife. Certified co. of satisfaction-peice of above mortg'. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit E. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

349 We, Jeanet Clarke, of Washington City; James C. R. Smith, of Newark of New Jersey; and Joseph Duncan, and Elizabeth C. Duncan, of Morgan County, in the State of Illinois, do hereby certify that a certain mortgage, bearing date the 10th day of July, 1830, made and executed by Matthew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City, of the first part, to us of the second part, and recorded in the office of the register in and for the city and county of New York, in liber 139 of mortgages, page 569, on the second day of October, 1830, is paid.

25 August, 1834.

JEANET CLARKE.
J. C. R. SMITH.
JOSEPH DUNCAN.
ELIZABETH C. DUNCAN.
JAMES McC. COLGATE.

Witness:
J. W. CANFIELD.
D. J. CANFIELD.

WASHINGTON COUNTY, *District of Columbia, ss:*

Be it remembered that, on this twenty-second day of January, eighteen hundred and thirty-five, before me, William Cranch, chief judge of the circuit court of the United States, in and for said district, came Jeanet Clarke, to me personally known as the party who signed the above and annexed release of mortgage, and did acknowledge the said release to be her act and deed.

W. CRANCH.

STATE OF NEW JERSEY, *ss:*

Personally appeared before me, Joseph C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, in the
350 said State, Dayton J. Canfield, of the county of Morris, in the said State, who is personally known to me, and who being duly sworn, on his oath saith: That he is personally acquainted with Joseph Duncan and Elizabeth C. Duncan, his wife, mentioned in and who have signed the foregoing and hereunto annexed certificate of release and discharge of a mortgage therein mentioned; that the said Joseph Duncan and his said wife, reside in the State of Illinois, and are not now in the State of New Jersey; and this deponent further saith that he saw the said Joseph Duncan & Elizabeth C. Duncan, his wife, severally sign their names to the said certificate, and heard them acknowledge the same to be their act for the purposes therein expressed; and that he, this deponent, and Isaac W. Canfield, the other subscribing witness, who also resides in the county of Morris aforesaid, severally subscribed their names as witnesses to the execution of the said instrument by the said Joseph Duncan and his said wife.

DAYTON J. CANFIELD.

Sworn to and subscribed before me, at Newark aforesaid, the 2d day of Feb'y, A. D. 1835.

JO'S C. HORNBLOWER.

NEW JERSEY, *ss:*

Personally appeared before me, Jo's C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, in the said
351 State, on this third day of February, A. D. eighteen hundred and thirty-five, James C. R. Smith, of the same place, personally known to me, and who, I am satisfied, is one of the persons named in the foregoing and hereunto annexed certificate of release of the mortgage therein mentioned, and acknowledged that he signed and delivered the same as his voluntary act for the purposes therein mentioned.

Witness my hand at Newark aforesaid, the day and year aforesaid.

JO'S C. HORNBLOWER.

OFFICE OF THE REGISTER OF DEEDS, &c.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 26th day of March, A. D. 1835, at o'clock min. m., liber 5 of discharges of mort's, page 15, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name, and affixed my official seal, this 20th day of Oct., 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

one of the individuals described in and who executed the above certificate; and the said James C. R. Smith acknowledged that he executed the same.

HENRY L. CLARKE,
Com'r of Deeds.

WASHINGTON COUNTY, *District of Columbia:*

346 Be it remembered that, on the third day of December, anno Domini eighteen hundred and thirty-three, before me, William Cranch, chief judge of the district court of the United States in and for said District, personally appeared the within-named Jeanet Clarke and Matthew St. Clair Clarke, to me personally known as party grantors, and did severally acknowledge the within instrument to be their act and deed; and at the same time came Anna R. Clarke, wife of said Matthew, to me also personally known as party grantors, and being by me examined, seperate and apart from her said husband, and the contents of the within instrument having been by reading made known to her, she did acknowledge the within instrument to be her act and deed, and that she did sign, seal, and deliver the same freely and voluntarily, without any coertion or compulsion of her said husband or from fear of his displeasure.

W. CRANCH.

347 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 19th day of January, A. D. 1835, at o'clock min., m., in lib. 4 of discharges of mort's, page 558, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed name and affixed my official seal this 20th day of Oct., 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

348 (Indorsed:) Joseph Duncan and Elizabeth C., his wife, to Jeanet Clarke, James C. R. Smith, and Matthew St. Clair Clarke and wife. Certified co. of satisfaction-peice of above mortg'. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit E. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

349 We, Jeanet Clarke, of Washington City; James C. R. Smith, of Newark of New Jersey; and Joseph Duncan, and Elizabeth C. Duncan, of Morgan County, in the State of Illinois, do hereby certify that a certain mortgage, bearing date the 10th day of July, 1830, made and executed by Mathew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City, of the first part, to us of the second part, and recorded in the office of the register in and for the city and county of New York, in liber 139 of mortgages, page 569, on the second day of October, 1830, is paid.

25 August, 1834.

JEANET CLARKE.
J. C. R. SMITH,
JOSEPH DUNCAN,
ELIZABETH C. DUNCAN.
JAMES McC. COLGATE.

Witness:
J. W. CANFIELD.
D. J. CANFIELD.

WASHINGTON COUNTY, *District of Columbia, ss:*

Be it remembered that, on this twenty-second day of January, eighteen hundred and thirty-five, before me, William Cranch, chief judge of the circuit court of the United States, in and for said district, came Jeanet Clarke, to me personally known as the party who signed the above and annexed release of mortgage, and did acknowledge the said release to be her act and deed.

W. CRANCH.

STATE OF NEW JERSEY, *ss:*

Personally appeared before me, Joseph C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, in the
350 said State, Dayton J. Canfield, of the county of Morris, in the said State, who is personally known to me, and who being duly sworn, on his oath saith: That he is personally acquainted with Joseph Duncan and Elizabeth C. Duncan, his wife, mentioned in and who have signed the foregoing and hereunto annexed certificate of release and discharge of a mortgage therein mentioned; that the said Joseph Duncan and his said wife, reside in the State of Illinois, and are not now in the State of New Jersey: and this deponent further saith that he saw the said Joseph Duncan & Elizabeth C. Duncan, his wife, severally sign their names to the said certificate, and heard them acknowledge the same to be their act for the purposes therein expressed; and that he, this deponent, and Isaac W. Canfield, the other subscribing witness, who also resides in the county of Morris aforesaid, severally subscribed their names as witnesses to the execution of the said instrument by the said Joseph Duncan and his said wife.

DAYTON J. CANFIELD.

Sworn to and subscribed before me, at Newark aforesaid, the 2d day of Feb'y, A. D. 1835.

JO'S C. HORNBLOWER.

NEW JERSEY, *ss:*

Personally appeared before me, Jo's C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, in the said
351 State, on this third day of February, A. D. eighteen hundred and thirty-five, James C. R. Smith, of the same place, personally known to me, and who, I am satisfied, is one of the persons named in the foregoing and hereunto annexed certificate of release of the mortgage therein mentioned, and acknowledged that he signed and delivered the same as his voluntary act for the purposes therein mentioned.

Witness my hand at Newark aforesaid, the day and year aforesaid.

JO'S C. HORNBLOWER.

OFFICE OF THE REGISTER OF DEEDS, &c.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 26th day of March, A. D. 1835, at o'clock min. m., liber 5 of discharges of mort's, page 15, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name, and affixed my official seal, this 20th day of Oct., 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

352 (Indorsed:) Mathew St. Clair Clarke and Anna R. Clarke, his wife, to Jeanet Clarke, James C. R. Smith, and Joseph Duncan and Elizabeth C., his wife, certified co. of satisfaction piece of above mortg. U. S. circuit court, Clarke vs. Executors of Boorman. Exhibit F. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

353 We, Matthew St. Clair Clarke and Anna R. Clarke, of Washington, District of Columbia; James C. R. Smith, of Newark, New Jersey; and Joseph Duncan and Elizabeth C. Duncan, of Morgan County, Illinois, do certify hereby that a certain mortgage, bearing date the tenth day of July, eighteen hundred and thirty, made and executed by Jeanet Clarke, of said city of Washington, of the first part, to us of the second part, and recorded in the office of the register in and for the city and county of New York, in liber 139 of mortgages, page 571, on the second day of October, 1830, is paid.

25 August, 1834.

M'W ST. CLAIR CLARKE.
ANNA RHEA CLARKE.
J. C. R. SMITH.
JOSEPH DUNCAN.
ELIZABETH C. DUNCAN.
JAMES McC. COLGATE.

Witness:
J. W. CANFIELD.
D. J. CANFIELD.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-second day of January, eighteen hundred and thirty-five, before me, William Cranch, chief judge of the circuit court of the United States in and for said district, came Matthew St. Clair Clarke, personally known to me as a party to the above and annexed release, and did acknowledge the same to be his act and deed; and at the same time came Anna R. Clarke, wife of said Matthew, to me also personally known as one of the above signers of the release, and being by me examined seperate and apart from her said husband,
354 and the contents of said release being made known to her, did declare that she did freely and voluntarily execute the same, without any coertion or compulsion of her said husband or fear of his displeasure.

W. CRANCH.

STATE OF NEW JERSEY, *ss:*

Personally appeared before me, Joseph C. Hornblower, chief justice of the State of New Jersey, at my chambers in Newark, in the said State, Dayton J. Canfield, of the county of Morris, in the said State, who is personally known to me, and who, being duly sworn, on his oath saith: That he is personally acquainted with Joseph Duncan & Elizabeth C. Duncan, his wife, mentioned in and who have signed the foregoing and hereunto annexed certificate of release and discharge of the mortgage therein mentioned; that the said Joseph Duncan and his said wife reside in the State of Illinois, and are not now in the State of New Jersey; and this deponent further saith that he saw the said Joseph Duncan and Elizabeth C. Duncan, his wife, severally sign their names to the said certificate, and heard them acknowledge the same to be their act for the purposes therein expressed; and that he, this deponent, and

Isaac W. Canfield, the other subscribing witness, who also resides
355 in the county of Morris aforesaid, severally subscribed their names as witnesses to the execution of the said instrument by the said Joseph Duncan and his said wife.

DAYTON J. CANFIELD.

Sworn to and subscribed before me, at Newark aforesaid, the 2d day of Feb'y, A. D. 1835.

JOS. C. HORNBLOWER.

STATE OF NEW JERSEY, *ss:*

Personally appeared before me, Joseph C. Hornblower, chief justice of the State of New Jersey, at my chambers, in Newark, on this third day of February, A. D. eighteen hundred and thirty-five, James C. R. Smith, who is personally known to me, and who, I am satisfied, is the person named in the foregoing and hereunto annexed certificate of release or discharge of the mortgage therein mentioned, and acknowledged that he signed and delivered the same as his voluntary act for the purpose therein expressed.

Witness my hand, at Newark aforesaid, in the State of New Jersey, the day and year aforesaid.

JOS. C. HORNBLOWER.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 26th day of March, A. D. 1835, in liber 5 of discharges of mort's, page 16, and certify the same to be a correct transcript therefrom and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 20 day of October, 1870.

MICHAEL CONNOLLY, *Register.*

(Indorsed:) Jeanet Clarke to Matthew St. Clair Clarke & Anna R. Clarke, his wife; James C. R. Smith; and Joseph Duncan & Elizabeth C., his wife. Certified co. of satisfaction-piece of above mortg. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit G. Louis Janin, of counsel for pl'ff. Filed Sept. 12, 1871.

356 [Warrantee deed.—W. Reid Gould, law-blank publisher and stationer, 158 Nassau st., N. Y.]

This indenture, made the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Matthew St. Clair Clarke, of the city of Washington, in the District of Columbia, trustee for Jeanet Clarke, late of Greencastle, in the State of Pennsylvania, widow, and the said Jeanet Clarke, widow as aforesaid of the first part, and Peter Pinckney, of the city, county, and State of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand seven hundred and sixty dollars, ($1,760,) lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents, have ganted, bargained, sold, aliened,

remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of ground, situate, lying, and being on the southerly side of Stanton street, between Forsyth and Eldridge streets, in the city of New York, known and distinguished as lot number (7,) seven, in the sub-division of certain six lots, to wit, number 1922, 1923, 1924, 1925, 1926, and 1927, on map or chart of the estate, late the property of James DeLancey, esq., made by Evert Bancker, commonly called map of DeLancey's farm, into nine equal lots, between Forsyth and Eldridge streets and fronting on Stanton street, which said lot number 7, (seven,) hereby conveyed, begins on the southerly side of Stanton street, at a point distant one hundred and thirty-three feet and four inches easterly from the corner of Stanton and Forsyth streets, and sixty-six feet and eight inches westerly from the corner of Stanton and Eldridge streets, and runs thence easterly, along the southerly side of Stanton street, twenty-two feet two inches and two-thirds of an inch, to lot number 8, (eight;) and thence, southerly, along lot number 8, (eight,) parallel with Eldridge street, 75 (seventy-five) feet; thence, westerly, parallel with street, twenty-two feet two inches and two-thirds of an inch, to lot number 6, (six;) and thence, northerly, along lot number 6, (six,) parallel with Forsyth street, seventy-five feet, to the place of beginning; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in
357 equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

And the said parties hereto of the first part, for themselves and their heirs, executors, and administrators, do hereby, jointly and severally, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, or one of them, at the time of the sealing and delivery of these presents, are lawfully seized in their, his, or her own right, a good, absolute, and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority, to grant, bargain, sell and convey the same, in manner aforesaid.

And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above-granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever.

And also, that the said parties of the first part, and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore

granted premises, by, from, under, or in trust for them or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required; and the said parties hereto of the first part and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR CLARKE, [L. S.]
Trustee of Jeanet Clarke.
JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—(the name of the grantee, Peter Pinckney, written on an erasure before signing.)
G. A. D. CLARKE.
W. CRANCH.

358 DISTRICT OF COLUMBIA,
Washington County, ss:

Be it remembered that, on this twenty-ninth day of November, anno Domini one thousand eight hundred and forty-three, before me, William Cranch, chief judge of the circuit court of the United States in and for the district aforesaid, came Matthew St. Clair Clarke and Jeanet Clarke, to me personally known as the grantors named in the within indenture, and did severally acknowledge the said indenture to be their act and deed.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York, ss:

On the second day of December, A. D. 1843, came before me personally George A. D. Clarke, and being by me duly sworn, says: That he resides at Cumberland, in the State of Maryland; that he saw Matthew St. Clair Clarke and Jeanet Clarke execute the *the* within conveyance; that he subscribed his name thereto as a witness, and that he knew the said Matthew St. Clair Clarke and Jeanet Clarke to be the persons described in, and who executed the said conveyance; and at the same time appeared Lewis B. Woodruff, residing in the city of New York, who, being by me duly sworn, says that he knows the said George A. D. Clarke to be the same person who was a subscribing witness to the within conveyance, which is to me satisfactory evidence of the same.

ADDISON M. BURT,
Com'r of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 2nd day of December, A. D., 1843, at 1 o'clock 25 min. p. m., liber 440 of con's, page 407, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 24th day of June, 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

(Indorsed:) M. St. Clair Clarke to Peter Pinckney. Deed. Dated , 18 . U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit H. Louis Janin, of counsel for pl'ffs. Filed Sept. 12, 1871.

359 Warrantee-deed.—W. Reid Gould, law-blank publisher and stationer, 158 Nassau st., N. Y.]

This indenture, made the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Matthew St. Clair Clarke, of the city of Washington, in the District of Columbia, (trustee for Mrs. Jeanet Clarke, late of Greencastle, in the State of Pennsylvania, widow;) and the said Jeanet Clarke, widow as aforesaid, of the first part, and Peter Pinckney, of the city, county, and State of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand nine hundred and ten dollars, ($1,910.00,) lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of ground situate, lying, and being on the easterly side of Forsyth street, one hundred feet distant southerly from the southeastly corner of Stanton and Forsyth streets, in the city of New York, and known and distinguished as lot number 651, (six hundred and fifty-one,) on a map or chart of the estate, late the property of James Delancey, esquire, made by Evert Bancker, commonly called map of Delancey's farm, bounded and continuing as follows: Westerly, in front, by Forsyth street, twenty-five feet; northerly by lot number 652, (six hundred and fifty-two,) one hundred feet; easterly, in the rear, by lot number 654, (six hundred and fifty-four,) twenty-five feet; and southerly by lot number 650, (six hundred and fifty,) one hundred feet, according to the aforesaid map or chart; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said
360 part' of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns,

to his and their own proper use, benefit, and behoof forever. And the said parties hereto of the first part, for themselves and their heirs, executors, and administrators, do hereby, jointly and severally, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, or one of them, at the time of the sealing and delivery of these presents, are lawfully seized in their, his, or her own right, of a good, absolute, and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever.

And also, that the said parties of the first part, and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required. And the said parties of the first part, and their heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR *CLAIR* CLARKE, [L. S.]
Trustee of Jeanet Clarke.

JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—
G. A. D. CLARKE.
W. CRANCH.

361 DISTRICT OF COLUMBIA,
Washington County, ss:

Be it remembered that, on this twenty-ninth day of November, anno Domini one thousand eight hundred and forty-three, before me, William

Cranch, chief judge of the circuit court of the United States in and for the district aforesaid, came Mathew St. Clair Clarke and Jeanet Clarke, to me personally known as the grantees named in the within indenture, and did severally acknowledge the said indenture to be their act and deed.

W. CRANCH.

STATE OF NEW YORK,
City & County of New York, ss:

On this 2d day of December, 1843, before me, came George A. D. Clarke, and being by me duly sworn, says: That he resides at Cumberland, in the State of Maryland; that he saw Mathew St. Clair Clarke and Jeanet Clarke execute the foregoing conveyance; that he, the said George A. D. Clarke, subscribed his name thereto as a witness, and that he knew the said Mathew St. Clair Clarke and Jeanet Clarke to be the persons described in, and who executed said conveyance. And at the same time came before me Lewis B. Woodruff, residing in the city of New York, who, being by me duly sworn, says that he knows the said George A. D. Clarke to be the same person who was a subscribing witness to the aforesaid conveyance, which to me is satisfactory evidence thereof.

ADDISON M. BURT,
Comm'r of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of N. York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 2d day of December, A. D. 1843, at 1 o'clock 25 min. p. m., in lib. 440 of con's, page 409, and certify the same t be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal, this 11th day of June, 1870.

[SEAL.] MICHAEL CONNOLLY, *Register.*

(Indorsed:) Mathew St. Clair Clarke, trustee to Peter Pinckney. Deed. Dated , 18 . U. S circuit court. Clarke vs. Executors of Boorman. Exhibit I. Louis Janin, of counsel for pl'ff's. Filed Sept. 12, 1871.

362 [Warrantee-deed.—W. Reid Gould, law-blank publisher and stationer, 158 Nassau st., N. Y.]

This indenture, made the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Matthew St. Clair Clarke, of the city of Washington, in the District of Columbia, (trustee for Mrs. Jeanet Clarke, late of Greencastle, in the State of Pennsylvania, widow,) and the said Jeanet Clarke, widow, as aforesaid of the first part, and Quimby Kipp, of the city, county, and State of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of two thousand and twenty dollars, ($2,020.00) lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised,

released, conveyed, and, confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of ground, situate, lying, and being on the westerly side of Eldridge street, one hundred feet distant from the southwesterly corner of Stanton and Eldridge streets, in the city of New York, and known and distinguished as lot number 654, (six hundred and fifty-four,) on a "map or chart of the estate, late the property of James DeLancey, esquire, made by Evert Bancker, commonly called map of DeLancey's farm," bounded and containing as follows: Easterly, in front, by Eldridge street, twenty-five feet; northerly by lot number 653, (six hundred and fifty-three,) one hundred feet; westerly, in the rear, by lot number 651, (six hundred and fifty-one,) twenty-five feet; and southerly by lot number 655, (six hundred & fifty-five,) one hundred feet, according to the aforesaid map or chart; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part,
363 of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said parties hereto of the first part, for themselves and their heirs, executors, and administrators, do hereby, jointly and severally, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part or one of them, at the time of the sealing and delivery of these presents, are lawfully seized in their, his, or her own right of a good, absolute, and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority, to grant, bargain, sell and convey the same, in manner aforesaid; and that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever.

And also, that the said parties of the first part, and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his

heirs or assigns, or their counsel learned in the law, shall be reasonably devised, advised, or required; and the said parties hereto of the first part and their heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR CLARKE, [L. S.]
Trustee of Jeanet Clarke.
JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—
G. A. D. CLARKE.
W. CRANCH.

364 DISTRICT OF COLUMBIA,
Washington County, ss:

Be it remembered that, on this twenty-ninth day of November, anno Domini one thousand eight hundred and forty-three, before me, William Cranch, chief judge of the circuit court of the United States in and for the district aforesaid, came Mathew St. Clair Clarke, and Jeanet Clarke, to me personally known to be the grantors named in the within indenture, and did severally acknowledge the said indenture to be their act and deed.

W. CRANCH.

STATE OF NEW YORK,
City & County of New York, ss:

On the 2d day of December, 1843, before me, came George A. D. Clarke, and being by me duly sworn, says: That he resides at Cumberland, in the State of Maryland; that he saw Matthew St. Clair Clarke and Jeanet Clarke execute the preceding conveyance; that he, the said George A. D. Clarke, subscribed his name thereto as a witness, and that he knew the said Matthew St. Clarke and Jeanet Clarke to be the persons described in, and who executed the said conveyance; and at the same time came before me Lewis B. Woodruff, residing in the city of New York, who, being by me duly sworn, deposes and says that he knows the said George A. D. Clarke to be the same person who was a subscribing witness to the within conveyance, which is to me satisfactory evidence of the same.

ADDISON M. BURT,
Com'r of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 2d day of December, A. D. 1843, at 1 o'clock 25 min. p. m., in lib. 440 of con's, page 410, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, this 11th day of June, 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

(Indorsed:) Matthew St. Clair Clarke, trustee, to Quimby Kipp. Deed. Dated , 18 . U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit J. Louis Janin of counsel for pl'ffs. Filed Sept. 12, 1871.

365 [Warantee deed.—W. Reid Gould, law-blank publisher and stationer, 158 Nassau st., N. Y.]

This indenture, made the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Mathew St. Clair Clarke, of the city of Washington, trustee for Jeanet Clarke, late of Greencastle, in the State of Pennsylvania, widow, and the said Jeanet Clarke, widow as aforesaid, of the first part, and George W. Gillett, of the city of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of sixteen hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of ground, situate, lying, and being on the southerly side of Stanton street, in the city of New York, between Forsyth and Eldridge streets, known and distinguished as lot number (4) four in the subdivision of certain six lots (to wit, numbers 1922, 1923, 1924, 1925, 1926, & 1927, on map or chart of the estate late the property of James De Lancey, esq'r, made by Evert Bancker, commonly called map of De Lancey's farm) into nine equal lots, between Forsyth and Eldridge streets and fronting on Stanton street, which said lot number (4,) four, hereby conveyed, begins on the southerly side of Stanton street at a point distant sixty-six feet and eight inches easterly from the corner of Stanton and Forsyth streets, (and one hundred and thirty-three feet four inches westerly from the corner of Stanton and Eldridge streets,) and runs thence, easterly, along the southerly side of Stanton street, twenty-two feet two inches and two thirds of an inch; thence, southerly, along lot number (5,) five, seventy-five feet; thence, westerly, parallel with Stanton street, twenty-two feet two inches and two-thirds of an inch to lot number (3,) three; and thence, northerly, along lot number (3,) three, parallel with Forsyth street, seventy-five feet, to the place of beginning; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law
366 as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

And the said parties hereto of the first part, for themselves and their heirs, executors, and administrators, do hereby, jointly and severally, covenant, grant, and agree to and with the said party of the

second part, his heirs and assigns, that the said parties of the first part, or one of them, at the time of the sealing and delivery of these presents, are lawfully seized in their, his, or her own right of a good, absolute, and indefeasible estate of inheritance in fee-simple, of, and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid; and that the said party of the second part, his heirs, and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever.

And, also, that the said parties of the first part and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore-granted premises, by, from, under, or in trust for them, or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, his heirs, and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required; and the said parties of the first part and their heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR CLARKE, [L. S.]
Trustee of Jeanet Clarke.
JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—
G. A. D. CLARKE.
W'M CRANCH.

367 DISTRICT OF COLUMBIA,
Washington County, ss:

Be it remembered that, on this twenty-ninth day of November, anno Domini one thousand eight hundred and forty-three, before me, William Cranch, chief judge of the circuit court of the United States, in and for the district aforesaid, came Mathew St. Clair Clarke and Jeanet Clarke, to me personally known as the grantors named in the within indenture, and did severally acknowledge the said indenture to be their act and deed.

W. CRANCH.

STATE OF NEW YORK,
City & County of New York, ss:

On the fourth day of December, 1843, before me, personally came George A. D. Clarke, with whom I am personally acquainted, and being by me duly sworn says: That he is a resident of Cumberland, in the State of Maryland; that he saw Matthew St. Clair Clarke and Jeanet Clarke execute the within conveyance; that he, the said George A. D. Clarke, subscribed his name thereto as a witness; and that he knew the said Matthew St. Clair Clarke and Jeanet Clarke to be the same persons described in and who executed the said conveyance, which to me is satisfactory evidence thereof.

ADDISON M. BURT.
Com'r of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 5th day of December, A. D. 1843, at 3 o'clock 30 min. p. m., in lib. 441 of con's, page 28, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 11th day of June, 1870.

[L. S.] MICHAEL CONNOLLY, *Register.*

(Indorsed:) Matthew St. Clair Clarke, trustee to Geo. W. Gillett. Deed. Dated , 18 . U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit K. Louis Janin, of counsel for complainants. Filed Sept. 12, 1871.

368 [Warrantee-deed.—W. Reid Gould, law-blank publisher and stationer, 158 Nassau st., N. Y.]

This indenture, made the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, between Mathew St. Clair Clarke, of the city of Washington, (trustee for Jeanet Clarke, late of Green Castle, in the State of Pennsylvania, widow, and the said Jeanet Clarke, widow as aforesaid, of the first part, and George W. Martin, of the city and State of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of two hundred and twenty-five dollars, lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel, of ground, situate, lying, and being on the southeasterly corner of Stanton and Forsyth streets, in the city of New York, known and distinguished as lot number 1, (one,) in the subdivision of certain six lots, to wit, numbers 1922, 1923, 1924, 1925, 1926, and 1927, on map or chart of the estate, late the property of James De Lancey, esq., made by Ebert Bancker, commonly called map of De Lancey farm,) into nine equal lots, between Forsyth and Eldridge

streets, and fronting on Stanton street, which said lot number one, hereby conveyed, begins at the said corner of Forsyth and Stanton street, and runs easterly along the southerly side of Stanton street, twenty-two feet two inches and two-thirds of an inch; and thence, southerly, along lot number 2, (two,) seventy-five feet; thence, westerly, parallel with Stanton street, twenty-two feet two inches and two-thirds of an inch to Forsyth street; thence, northerly, along Forsyth street, seventy-five feet, to the place of beginning; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the
369 first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said parties hereto, of the first part, for themselves and their heirs, executors, and administrators, do hereby, jointly and severally, covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, or any of them, at the time of the sealing and delivery of these presents, are lawfully seized in their, his, or her own right of a good, absolute, and indefeasible estate of inheritance in fee-simple, of, and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid; and that the said party of the second part, his heirs, and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever.

And also, that the said parties of the first part, and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, or either of them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make do, and execute or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel, learned in the law, shall be reasonably advised or required. And the said parties of the first part and their heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their

heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W S'T CLAIR CLARKE, [L. S.]
Trustee of Jeanet Clarke.
JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—(The name of the grantee, "George W. Martin," written on an erasure before signing.)
G. A. D. CLARKE.
W. CRANCH.

370 DISTRICT OF COLUMBIA,
Washington County, ss:

Be it remembered that, on this twenty-ninth day of November, anno Domini one thousand eight hundred and forty-three, before me, William Branch, chief judge of the circuit court of the United States in and for the district aforesaid, came Matthew St. Clair Clarke and Jeanet Clarke, to me personally known as the grantors named in the within indenture, and did severally acknowledge the said indenture to be their act and deed.

W. BRANCH.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 5th day of December, A. D. 1843, at 3 o'clock, 30 min. p. m., in lib. 441 of con's, page 30, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, this 11th day of June, 1870.

[SEAL.] MICHAEL CONNOLLY, *Register.*

STATE OF NEW YORK,
City and County of New York ss:

On this fourth day of December, A. D. 1843, George A. D. Clarke, with whom I am personally acquainted, came before me, and being by me duly sworn, deposes and says: That he is a resident of Cumberland, in the State of Maryland; that he saw Matthew St. Clair Clarke and Jeanet Clarke, execute the foregoing conveyance; that he, said George A. D. Clarke, subscribed his name thereto as a witness, and that he knew the said Matthew St. Clair Clarke and Jeanet Clarke to be the persons described in, and who executed the said conveyance, which, to me, is satisfactory evidence thereof.

ADDISON M. BURT,
Comm'r of Deeds.

371 (Indorsed:) Matthew St. Clair Clarke, trustee to Geo. W. Martin. Deed, dated 18 . U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit L. Louis Janin, of counsel for complainants. Filed Sept. 12, 1871

371 Know all men by these presents that I, George A. D. Clarke, of Cumberland, in the county of Cumberland, in the State of Maryland, only child of Mrs. Jeanet Clarke, in the foregoing deed mentioned, for and in consideration of the money expressed in the said deed, and of one dollar to me in hand paid by the said Peter Pinckney, in the said deed also mentioned, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and conveyed, and by these presents, do grant, bargain, sell, and convey to the said Peter Pinckney and his heirs and assigns forever the lot of ground and premises in the said foregoing deed described, and all my right, title, estate, and interest therein: To have and to hold the same unto him, the said Peter Pinckney, and his heirs and assigns forever. And I do hereby covenant for myself and my heirs to and with the said Peter Pinckney, and his heirs and assigns, to warrant and defend the said premises unto him, the said Peter Pinckney, and his heirs and assigns, against all and every person and persons lawfully claiming or to claim the same.

In witness whereof I have hereunto set my hand and seal this first day of December, one thousand eight hundred and forty-three.

G. A. D. CLARKE. [L. S.]

In the presence of—
L. B. WOODRUFF.

372 STATE OF NEW YORK,
City & County of New York, ss:

On the 1st day of December, 1843, before me, came George A. D. Clarke, personally, and acknowledged that he executed the above conveyance; and, at the same time, appeared Lewis B. Woodruff, residing in the city of New York, who, being by me duly sworn, said that he knew the individual making said acknowledgement to be the same person described in and who executed said conveyance, which is to me satisfactory evidence of the same.

ADDISON M. BURT,
Com'r of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 1st day of May, A. D. 1855, at 9 o'clock min., a. m., in lib. 681 of con's, page 257, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 24th day of June, 1870.

[SEAL.] MICHAEL CONNOLLY, *Register.*

373 (Endorsed:) Geo. A. D. Clarke to Peter Pinckney. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit M. Louis Janin, of counsel for complainants. Filed Sept. 12, 1871.

374 This is the last will and testament of James R. Smith, of the city of New York, merchant, made, altho' weak in body, yet sound in mind, memory, & understanding, thanks be to God for all his mercies, through the merits and intercession of the Great Redeemer.

First. I desire that my body may be decently interred in the discretion of my executors hereinafter named.

Second. I do hereby authorize my executors, herein named & appoin'ed, and the survivors, & the survivor of them, or such other per-

son or persons who may lawfully obtain the right to execute this my will, in their discretion, to sell, in fee-simple or otherwise, according to the nature of the estate I may hold at the time of my decease, at public auction or at private sale, the whole or any part of my said estate, real or personal, and to execute and deliver good and sufficient deeds or conveyances in the law for the same to the purchaser or purchasers thereof, his or their heirs and assigns, forever.

Third. Out of the proceeds of my said estate, after deducting all costs, charges, and expences that my said executors may *may* sustain, or be put unto, my desire is that my said executors do pay, as soon as conveniently may be, all my just debts, funeral-charges, & expences, and the residue of my estate, unless the same or any part thereof shall be otherwise disposed of by codicil or codicils to this my last will and testament, I mean, shall be distributed, according to the laws of the State of New York, in the same manner as in case I had happened to die intestate.

Lastly. I do hereby nominate, constitute, and appoint Andrew Foster, John Thomson, James Boorman, my wife, Hannah Smith, and Mathew Saint Clair Clarke, executors of this my last will and testament.

In testimony whereof I have hereto set my hand this twenty-third day of January, one thousand eight hundred & seventeen.

JAMES R. SMITH. [L. S.]

Signed, published, and declared by the said James R. Smith, the testator, as & for his last will and testament, in the presence of us, who, at his request, & in his presence, & in the presence of each other, have hereto set our names as witnesses—

ROBERT FINLEY
ROBERT B. E. M'CLEOD.
ROBERT BLAKE.

CODICIL.

This is a codicil to be added to the last will and testament of me, James R. Smith, of the city of New York, merchant, which will bears date on or about the twenty-third day of January last past.

First. I do hereby ratify and confirm my said will in all respects, except so far as any part thereof may or shall be revoked or altered by this present codicil, and in addition to the powers granted in and to my said executors in relation to my said estate, I do hereby authorize them to lease the same estate or any part thereof, except such as shall otherwise be disposed of, in their discretion, and as they shall find the situation of my affairs require.

Second. I give, devise, and bequeath to my beloved wife, Hannah, all my real estate in the township of Newark, in the State of New Jersey, with all the rents, issues, and profits thereof, during her natural life, with full power and authority in her, by her last will and testament, to devise the same to all or any of our children in fee-simple absolute, and with the further power and authority in her by and with the consent *the consent* of the executors, to sell any and every part thereof, except the homestead, and to vest the proceeds thereof in funds for her further support during her natural life, having the same authority over said funds to distribute them by her last will and testament as she has over the estate from which they may be created. But if she shall not make her will in relation to said estate or the funds which may arise therefrom, then the said estate and the funds aforesaid, if created,

shall go to and be enjoyed by our said children as tenants in common, share and share alike, and to the legal representatives of such of them as may happen to die before my said wife. Also I give and bequeath to my said wife all my household goods and stores that may be on
A. D. hand, at the time of my decease, with all my farming and gardening tools or instruments, carriages, horses, cows, and beasts of every kind that I may be possessed of at the time of my death. Also I do hereby direct my executors to invest, as soon after my decease as
A. D. conveniently may be, the sum of *sum of* twenty-five thousand dollars ($25,000) in bonds secured by mortgage on real estate, or in stock of the United States, or of the city, or of the State of New York, or some incorporated company, in the State of New York or New Jersey, not connected with manufacturing business, as they, in their discretion, shall deem meet and prudent, and to alter and change the same into
375 any other sureties of like description as often as they may deem meet and proper, and to pay the interest, produce, and profits of such investment, or so much thereof as she shall judge necessary, to my said wife for her maintenance and support during her natural — and until such investment can conveniently be made, I do hereby direct my said executors to pay to my said wife, out of my estate at and after the sum of fifteen hundred dollars ($1,500) a year in half-yearly payments. And I do hereby give, devise, and bequeath unto my said wife and to her heirs and assigns forever, ten thousand dollars, part of the aforesaid sum of twenty-five thousand dollars, ($25,000,) to dispose of at her death as she may think proper, which provisions shall be in lieu and bar of all dower or right of dower in, to, or out of my estate of every kind and nature.

Third. I do hereby direct that my said executors shall grant and convey in fee-simple or otherwise accord to the nature of my estate at the time of my death the following lots, farms, tracts, pieces, or parcels of land, situate, lying, and being in the county of Ulster and State of New York, in the fifth allottment in the subdivision No. 3 of great lot No. 6 of the Hardenburgh patent, namely, lots numbers 236, 265, 266, and 274 said to contain, altogether, about five hundred and thirty acres or thereabouts, to the corporation of the Scotch Presbyterian Church in Cedar street, in the city of New York, and to their successors.

Fourth. I do hereby direct my said executors to sell and convey in fee simple, or otherwise, according to the nature of my estate at the time of my death, either at public or private sale, for the best price that can be had or obtained therefor the following lots, farms, tracts, pieces or parcels of land, situate in the before-described great lot number six of the Hardenburgh patent, *patent* namely, lots numbers 237, 238, 267, 272, said to contain, altogether, about five hundred thirty acres or thereabouts, and to invest the proceeds thereof in the like securities for money as before described, and apply the income, product, or profits thereof to the maintenance and education of poor and pious youth in the Theological Seminary of New York, created by and existing under the direction of the Associate Reformed Church, so long as the said seminary shall continue; and in case the said seminary shall become incorporated, then the said estate or the said securities may be transferred to the incorporation; and in case the said seminary shall cease to be so conducted, then the estate or securities are to be considered as part of my residuary estate.

Fifth. I do hereby direct my said executors to grant and convey in fee-simple, or otherwise, according to the nature of my estate at the time of my death all the following lots, farms, tracts, pieces or parcels

of land situate in the before-described great lot No. 6 of the Hardenburg' patent, namely, *namely* lots numbers 251, 262, 273, 275 said to contain five hundred and thirty acres or thereabouts, to the corporation of the Scotch Presbyterian Church, in the city of New York, and their successors, in trust and upon the condition that the said corporation shall sell and dispose of the said land and invest the proceeds thereof in like securities as aforesaid; upon this further trust that the income arising therefrom be laid out under the direction of the minister, elders, and deacons of the said church in fuel and provisions for the poor members of the church in full communion; coffee, sugar, tea, & rice, for those of them that are sick; and, upon this further trust that they purchase a permanent share in the city dispensary to enable the said poor members to have the benefits of the visits of the physician of the dispensary; and the said investment shall be called "The Lord's fund for his poor people."

Fifth, No. 2. I do hereby direct my said executors to grant and convey in fee-simple, or otherwise, according to the nature of my estate at the time of my death, to my niece, Ann Washington Lind, the wife of the Rev'd John Lind, of Green Castle, Pennsylvania, the following lots of land, *lots of land* situate in the before-described great lot No. 6 of the Hardenburg patent, namely, lots numbers 224 and 225, said to contain together two hundred and ninety-two and an half acres of land or thereabouts, and in case of her death, then to her children as tenants in common.

Sixth. I do hereby direct that my said executors shall grant and convey in fee-simple, or otherwise, according to the nature of my estate at the time of my death, to the two children of my nephew Robert C. Smith, by his wife, Hester Boorman, lot No. 223, situate in said great lot No. 6 of the Hardenburg patent, said to contain one hundred and forty-four acres of land; and also lot No. thirty-three, (33,) in township No. 6, (six,) in Watkins and Flint's purchase, in the county of Tioga, in the State of New York, on condition that if either of them die the survivor shall take the same, and in case of the death of both or the survivor of them, before they shall attain the age of twenty-one years and not leaving lawfull issue, then the same to go to their mother, Hester; and in case of her death, also, then to my niece, Ann Washington Lind, and her heirs, forever.

Seventh. I do hereby direct that my executors shall grant and convey in fee-simple to Sarah Vredenburg, the wife of the Rev'd John S. Vredenburg, of the State of New Jersey, lot No. 31, (thirty-one,) in township No. six, in Watkins and Flint's purchase, said to contain one hundred and thirty-seven and an half acres of land, which is situated in the county of Tioga, in the State of New York, and in case of her
376 death, then to her children share and share alike, as tenants in common.

Eighth. I do hereby direct my executors as soon after my decease as conveniently may be to invest the sum of eight hundred dollars in the like securities for money as before described, and to pay the income arising therefrom to Nancy Smith, the widow of my brother Dunbar Smith, deceased, during her natural life; after her death the said securities to be considered as part of my residuary estate.

Ninth. I give, devise, and bequeath to my sister Margaret Dyson, the wife of James Dyson, during their joint natural lives, and the survivor of them, the use, occupation, and enjoyment of the premises in Scotland which they have occupied *have occupied* for many years past, and after the death of the said Margaret and James Dyson, then the same to be granted and conveyed by my executors to her children that may survive

her, excepting George and Robert. And my further will is that such sum of money as shall be necessary to raise the annual sum of one hundred dollars shall be vested by my executors in the like securities and that they pay the said sum of one hundred dollars to my said sister Margaret yearly and every year during her natural life, and after her decease the said principal sum shall be considered as part of my residuary estate.

Tenth. I give and bequeath to my nephew George Dyson the sum of five hundred dollars as an acknowledgement of his good conduct and for his attentions to me during my last illness, and to my nephew Robert Dyson I give and bequeath the sum of one thousand dollars to be considered as in lieu of all services rendered to me by said Robert. The said sums to be paid to them so soon after my decease, the payment of my debts, and the appropriations hereinbefore directed, as conveniently may be.

Eleventh. I do further direct my executors to grant and convey in fee-simple, or otherwise, according to the nature of my estate at the time of my death, the two following lots or parcels of ground, being lots Nos. 276 and 277, in the said great lot No. 6 of the Hardenburg patent to the rest of the children of my said sister Margaret, as tenants in common, share and share alike.

Twelfth. All the rest, residue, and remainder of my estate of every kind and nature whatsoever and wheresoever situate, I give, devise, and bequeath unto my said executors in trust, that the same shall be equally divided to and amongst my four children, share and share alike, and to their respective heirs. My will further is that my son, James, and my daughter Elizabeth, shall each have the sum of fifteen hundred dollars set apart by my said executors for their support and education until they arrive at the age of twenty-one, and if that sum shall not be found sufficient, my executors shall take such further sum from their respective shares of my estate as shall be necessary. And I do hereby give the tuition, care, and guardianship of my said son, James, and my daughter Elizabeth, to my said wife. My will *my will* further is that my son, James, shall not come to the full possession and enjoyment of his portion of my estate until he shall arrive at the age of twenty-five years, nor shall he have the power to pawn, pledge, mortgage, or dispose of it in any way, the same or any part thereof, before the expiration of that time, but shall be entitled to receive the income arising from his portion between the years of twenty-one and twenty-five. I further direct that my daughters Jeanet, Hannah, and Elizabeth, if she should arrive at the age of twenty-one years, shall have the privelege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of my estate herein devised to them, in such manner as they may think proper, and over which, when so appropriated, they shall have absolu'e control; and the remaining two-thirds of the portions or shares of my daughters shall be held seperate and distinct and not liable to the control, debts, or engagements of either of their husbands which they now have or may hereafter have, as well those who are married as she who may hereafter marry, [giving however to the husbands of either or all of them in case the *in case the* wife shall die first, either with or without issue, the income of said reserved part of my estate, as long as she shall live, arising from his wife's portion, and after his death then to the child or children of my said daughter so dying;] and if either of my daughters shall die without lawful issue, or having issue which shall not attain the age of twenty-one years and without issue, then the share or portion of my said daughter after the death of

her husband, or if there be no husband living at her death, shall go and be divided among my other children, share and share alike, and to their issue, in case of the death of either of them, share and share alike, such issue to take the portion that would have belonged to his, her or their father or mother.

Lastly. And I do hereby authorize and require my said executors and the survivors or survivor of them to carry into effect all legal and lawful contracts made by and with any of my agent or agents for the sale of any of my lands upon the terms and conditions agreed upon, or upon any other terms that may be agreed upon, and to give and grant good and sufficient conveyance or conveyances (*ances*) in the law to the purchaser or purchasers thereof; and I do hereby declare my will to be that it shall and may be lawful to and for my said executors to employ one or more agent or agents for the management of the concerns of my said estate, and the same at their pleasure to dismiss and appoint
377 others, and by and out of all and any of the money which may, by virtue of this my will or any trust therein declared, come to their or any of their hands to deduct, retain to, and re-imburse themselves all such reasonable costs, charges and expences as they respectively shall or may sustain, expend, or be put unto in or about the execution of this my will; and also, that my said executors, their respective heirs, executors, and administrators shall be charged and charg'able only every of them for and with his or her own respective receipts and payments, acts, and wilful defaults, and not otherwise, and shall not be charged or charg'able with or for any sum or sums of money other than such as shall actually and respectively come to his, her, or their hands by virtue of this my will, nor with or for any loss or damages which may happen in or about the execution of all or any of the trusts hereby in them *in them* reposed without his, her, or their respective wilfull default.

In witness whereof, I have hereunto set my hand and seal, this thirtieth day of May, in the year of our Lord one thousand eight hundred and seventeen.

MEMORANDUM.—I do further direct that my executors shall pay over, so soon after my decease, the payment of my debts, and the previous appropriations as convenient, to the Orphan Assylum Society of the city of New York, and to the Society for the Relief of Poor Widows with Small Children, in the city of New York, each the sum of two hundred and fifty dollars in trust, that the same shall be appropriated to the permanent funds of the respective societies.

[L. S.] JAMES R. SMITH.

Signed, sealed, published, and declared by the said James R. Smith, the testator, as the codicil to his last will and testsment, in the presence of us, who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

CATHARINE BAKER.
HANNAH BYERS.
ANTH'Y DEY.

CITY AND COUNTY OF NEW YORK, *ss:*

Be it remembered that, on the eleventh day of June, in the year of our Lord one thousand eight hundred and seventeen, personally came and appeared before Silvanus Miller, surrogate of said county, Robert B. E. McLeod, of the city of New York, minister of the Gospel, and Robert Blake, of the said city, stone-cutter, who, being duly sworn, on

their oaths declared that they saw James R. Smith sign and seal an instrument in writing, purporting to be the will of the said James R. Smith, bearing date the twenty-third day of January, one thousand eight hundred and seventeen, (the preceding whereof is a true copy,) and heard him publish and declare the same as and for his last will and testament; that, at the time thereof, he, the said James R. Smith, was of sound disposing mind and memory, to the best of the knowledge and belief of these deponents; that their names, subscribed as witnesses to the said will, are of their own proper handwriting, respectively, which they subscribed as witnesses thereto, in the presence of the testator; and that they saw Robert Finley, the other witness to the said will, subscribe his name as a witness thereto, in the presence of the testator.

And be it also remembered that, on the eleventh day of June, in the year aforesaid, personally came and appeared before Silvanus Miller, surrogate of said county, Hannah Byers, of the said city, gentlewoman, who, being duly sworn, on her oath declared that she saw James R. Smith sign and seal an instrument in writing purporting to be a codicil to the will of the said James R. Smith, bearing date the thirtieth day of May, in the year one thousand eight hundred and seventeen, (the preceding whereof is a true copy,) and heard him publish and declare the same as and for a codicil to his last will and testament; that, at the time thereof, he, the said James R. Smith, was of sound disposing mind and memory, to the best of the knowledge and belief of this deponent; that her name, subscribed as a witness to the said codicil, is of her own proper handwriting, which she subscribed as a witness thereto, in the presence of the testator, and that she saw Catharine Baker and Anthony Dey, the other witnesses to the said codicil, subscribe their names as witnesses thereto, in the presence of the testator.

SILVANUS MILLER.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, send greeting:

Know ye that, at the city and county of New York, on the day of the date hereof, before Silvanus Miller, esquire, surrogate of our said county, the last will and testament of James R. Smith, deceased, (a copy whereof is hereunto annexed,) was proved, and is now approved and allowed by us; and the said deceased having, whilst he lived and at the time of his death, goods, chattels, or credits within this State, by means whereof the proving and registering the said will, and the granting administration of all and singular the said goods, chattels, and credits, and also the auditing, allowing, and final discharging the account thereof, doth belong unto us, the administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will, is granted unto Hannah Smith, the executrix, John Thomson and
378 James Boorman, two of the executors in the said will named, they being first duly sworn well and faithfully to administer the same, and to make and exhibit a true and perfect inventory of all and singular the said goods, and also to render a just and true account thereof, when thereunto required.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

Witness Silvanus Miller, esquire, surrogate of the said county, at the city of New York, the eleventh day of June, in the year of our Lord one thousand eight hundred and seventeen, and of our Independence the forty-first.

SILVANUS MILLER.

The people of the State of New York, by the grace of God free and independent, to all to whom it may concern, send greeting:

Know ye that, at the city and county of New York, on the eleventh day of June, in the year of our Lord one thousand eight hundred and seventeen, before Silvanus Miller, esquire, surrogate of our said county, the last will and testament of James R. Smith, deceased, was duly proved, and the execution thereof then granted unto Hannah Smith, the executrix, John Thomson and James Boorman, two of the executors in the said will named.

And whereas Mathew Saint Clair Clarke, one of the other executors in the said will named, hath this day appeared before our said surrogate to qualify as executor to the same:

Now, therefore, also know ye, that the administration of all and singular the goods, chattels, and credits of the said deceased and any way concerning his will, is granted unto the said Mathew Saint Clair Clarke, in conjunction with the said Hannah Smith, John Thomson, and James Boorman, he being first duly sworn, well and faithfully to administer the same and to make and exhibit a true and perfect inventory of all and singular the said goods, chattels, and credits; and also to render a just and true account thereof when thereunto required.

In testimony whereof we have caused the seal of office of our said surrogate to be hereunto affixed.

Witness, Silvanus Miller, esquire, surrogate of the said county, at the city of New York, the eighteenth day of February, in the year of our Lord one thousand eight hundred and eighteen, and of our Independence the forty-second.

SILVANUS MILLER.

STATE AND COUNTY OF NEW YORK,
Surrogate's Office, ss:

I, Edward C. West, surrogate of said county and acting as clerk of the surrogate's court, do hereby certify that I have compared the foregoing copy of the last will and testament and codicil thereto of James R. Smith, deceased, the proofs thereof, and letters-testamentary granted thereon, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

In testimony whereof I have hereunto set my hand and affixed my seal of office, this third day of December, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fifth.

[L.S.] EDWARD C. WEST, *Surrogate.*

STATE AND COUNTY OF NEW YORK,
Surrogate's Court, ss:

I, Edward C. West, surrogate of said county and presiding magistrate of the surrogate's court, do hereby certify that the foregoing exemplification of the last will and testament and codicil thereto of James R. Smith, deceased, together with the proofs thereof, and the letters-testamentary granted thereon, is authenticat'd in due form.

In testimony whereof I have hereunto set my hand and affixed the seal of the surrogate's court, this third day of December, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fifth.

[L. S.] EDWARD C. WEST, *Surrogate.*

(Indorsed:) Exemplified copy record, will, codicil, and letters-testamentary of James R. Smith. dec'd. Recorded in liber 54, pp. 9 and 316 of wills. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 1. Knox & Mason, sol'rs def'ts. Filed Sept. 12, '71. Hall, Clayton & Medole, printers, 46 Pine st., N. Y.

379 In the name of God, amen! Whereas James R. Smith, late of the city of New York, merchant, the former husband of the subscriber, Hannah Rodgers, now the wife of John R. B. Rodgers, of Newark, in the State of New Jersey, physician, did, in and by a certain codicil to his last will and testament, duly made and executed by him, the said James R. Smith, among other things, give, devise, and bequeath unto me, the said Hannah, all his real estate in the township of Newark, in the State of New Jersey aforesaid, with all the rents, issues, and profits thereof, during my natural life, with full power and authority to me, by my last will and testament, to devise the same to all or any of our children, in fee-simple absolute; and with the further power and authority to me, by and with the consent of the executors of the said will, to sell any and every part thereof, except the homestead, and vest the proceeds thereof in funds for my further support during my natural life, with the same power or authority also to distribute such funds, by my last will and testment, as was given to or vested in me as aforesaid in respect to devising the estate from which the said funds might arise or be produced; and did also give and bequeath to me, the said Hannah, all his household goods and stores that might be on hand at the time of his decease, with all his farming and gardening tools or implements, carriages, horses, cows, and beasts of every kind;

380 and did moreover direct his executors to invest, as soon after his decease as conveniently might be, the sum of twenty-five thousand dollars in bonds secured by mortgage on real estate, or in certain stocks in the said codicil mentioned, according to the discretion of the said executors, and to alter and change the same into any other securities of the like description as often as they should deem meet and proper, and to pay the interest, produce, and profits of such investment, or so much thereof as I should judge necessary, to me, the said Hannah, for my maintenance and support during my natural life; and, until such investment could conveniently be made, he, the said testator, did, in and by the said codicil, direct his executors to pay to me, the said Hannah, out of his estate, at and after the rate of fifteen hundred dollars a year, in half-yearly payments; and did furthermore give, devise, and bequeath unto me, the said Hannah, and to my heirs and assigns, forever, ten thousand dollars, part of the aforesaid sum of twenty-five thousand dollars, to dispose of at my death as I might think proper; which provisions should be in lieu and bar of all dower or right of dower in or out of his estate, of what kind or nature soever, as by the said codicil to the said will and testament, in the record thereof in the office of the surrogate of the county of New York, (reference being thereunto had,) may, among other things, more fully and at large appear.

381 And whereas the said James R. Smith having, in or about the month of June, in the year of our Lord one thousand eight hundred and seventeen, departed this life without altering or revoking any of the provisions in the said codicil to his will specified and declared, and I, the said Hannah, having elected to take as a devisee and legatee, under the said will and codicil, a marriage between me, the said Hannah, and the said John R. B. Rodgers, was, on or about the twenty-ninth day of November, in the year of our Lord one thousand eight

hundred and nineteen, duly had and solemnized; and in the contemplation thereof, and prior to the solemnization of the same, the said John R. B. Rodgers, in and by a certain indenture made between him, the said John R. B. Rodgers, of the first part, myself, the said Hannah Rodgers, (then Hannah Smith,) of the second part, and Robert S. Robertson, of the city of New York, merchant, of the third part, bearing date the day and year last mentioned, and duly executed under the hands and seals of the said parties, respectively, did, among other things, covenant, promise, grant, and agree to and with me, the said Hannah, and the said Robert S. Robertson, and to and with each of us, severally and respectively, and our and each of our executors and administrators (in substance and effect) that, notwithstanding such intended marriage and my subsequent coverture, all my estate and property, both real and personal, and as well such as already belonged to me, as any
382 which might, if I were to remain sole and unmarried thereafter, accrue to me, or become subject to my disposition or control, excepting as therein particularly excepted and reserved, (but which exception or reservation did not extend to anything hereinafter mentioned or hereby intended to be affected or disposed of,) should stand and remain, and be accounted and taken as my estate, separate and distinct from the estate of him, the said John R. B. Rogers, and be in nowise liable or subject to him, or the payment of his debts, but be and remain vested in and reserved to me, and subject to my control and disposition in the same manner as if the said intended marriage were not to take effect, and as if I were to remain sole and unmarried; and also, that, notwithstanding the said marriage then intended as aforesaid, and my consequent coverture, he, the said John R. B. Rogers, should and would permit and suffer me, the said Hannah, to give, grant, and dispose of my said separate estate to any person or persons whomsoever; and also to make and execute any will or testament whatsoever, or any appointment, testamentary ,or instrument in writing in nature of a will, ordering, devising, limiting, or appointing my said separate estate, or any part thereof, including the aforesaid sum of ten thousand dollars given and bequeathed to me as aforesaid, to dispose of at my death as before mentioned, to any person or persons whomsoever, for any use, trust, interest, or purpose whatsoever, and that he, the said John R. B. Rodgers, should and would permit and suffer such will or instrument
383 in nature of a will, to be duly proved by the executors therein to be named, and probate thereof to be had and taken as is usual in ordinary cases; and that the person or persons to whom I should give or dispose of any part of my said separate estate, or of the estate of the said James R. Smith, deceased, or of the aforesaid sum of ten thousand dollars given and bequeathed to me as aforesaid, should, and lawfully might, peac'ably and quietly have, hold, use, occupy, and enjoy the same, according to the true intent and meaning of such gift, devise or appointment, without any let, denial, hindrance, or interruption of or from him, the said John R. B. Rodgers, his heirs, executors, administrators or assigns, or any of them; as in and by the said indenture, reference being thereunto had, may, among other things, more fully and at large appear.

Now, therefore, I, the said Hannah Rodgers (late Hannah Smith, as before mentioned,) being in good health and of sound and disposing mind and understanding, do, in virtue of the premises above-recited or referred to, and of my own free will and accord, make, ordain and declare the following to be my last will and testament, as well of and concerning the property, estate, and effects given, devised, and bequeathed

to me in and by the aforesaid codicil to the last will and testament of the said James R. Smith, deceased, and the rights and interests thereby put at my disposal, and subjected to my control, or intented so to be, as of and concerning my own individual property and effects of what-
384 soever kind or description, and from whatsoever source acquired or derived, that is to say:

First. As to the aforesaid sum of ten thousand dollars, in and by the said codicil to the last will and testament of the said James R. Smith, deceased, given and bequeathed to me as before mentioned, in whatsoever form or state the same may exist or howsoever it may be situated at the time of my death, I will, order, and direct that the same be paid, appropriated, and disposed of in manner following, that is to say: The sum of two hundred dollars (parcel thereof) to Hannah Vredenburgh, daughter of the Rev. John S. Vredenburgh; the like sum of two hundred dollars (also parcel thereof) to Hannah Finley, daughter of the (late) Rev. Doctor Robert Finley; the like sum of two hundred dollars (also parcel thereof) to Hannah Canfield, daughter of Mr. Isaac Canfield; and the like sum of two hundred (also parcel thereof) to Hannah Caldwell, daughter of my brother Josiah F. Caldwell: such payments to be made to the said Hannah Vredenburgh, Hannah Finley, Hannah Canfield, and Hannah Caldwell, respectively, for their own use and benefit, as soon as conveniently may be after my decease, and I hereby give and bequeath the same accordingly. And the residue of the said sum of ten thousand dollars, after applying or appropriating so much thereof as shall be necessary for the payment of my debts, to be put out at interest, or otherwise invested by my executors hereinafter named, in such manner that the interest or income thereof be paid to
385 my said husband, the said John R. B. Rodgers, for his own use and benefit during his natural life, and that, after his death, the principal sum with the interest or income which shall thenceforward accrue on or arise from the same, be divided and distributed equally between my four children, Jeanet Clarke, Hannah Clarke, James C. R. Smith, and Elizabeth Smith, respectively, share and share alike; and in case of the death of any or either of them, before the decease of my said husband, then that the share or shares of him, her or them so dying be paid to his, her or their child or children, if such child or children shall then be living, and if not, then to the survivors of such my children in equal shares; and I hereby give and bequeath the same accordingly: Provided always, that if, at the time of the decease of my said husband, my said daughter, Jeanet Clarke, and her present husband shall be living, the share or portion of the said residue, which, according to the above disposition or bequest of the same, would be payable to her, my said daughter Jeanet, shall be reserved by my said executors, and put out at interest, or otherwise invested, in such manner that she, my said daughter, may receive the interest or income thereof, during the life-time of her said husband, for her own separate use and benefit, and that the principal sum or fund be paid to her immediately after his death; or, if she shall die in the life-time of her said husband, that the said principal sum or fund may thereupon be paid to such child or children, (if any,) as she shall
386 leave surviving her, and if she shall not leave any child her surviving, may be paid to and distributed among my other children which shall then be living, in equal shares, or (if any of them shall have previously died, leaving a child or children which shall still be living) among such of my children before named as shall then be living, and the child or children (then surviving) of such of my said children as

shall be dead; the child or children of any deceased parent in such case taking (per stirpes) the share or portion which would have fallen to his, her, or their parent if he or she had then been living.

Secondly. I give and bequeath to my said son, James C. R. Smith, the portraits of his father and myself, reserving, however, and hereby bequeathing the use and possession of my own to my husband, the said John R. B. Rodgers, during his natural life.

Thirdly. I give and bequeath my plate as follows, viz: My silver tankard (which was my grandfather Ogden's) and silver pitcher, to my son James; my silver coffee-pot, tea-pot, new cream-jug and sugar-dish, two dozen table-spoons, two dozen des'ert-spoons, two dozen tea-spoons, one soup-ladle, and two plated cake-baskets, to my daughter Elizabeth, and the residue of my said plate to my four children Jeanet, Hannah,
James, and Elizabeth, to be divided between them, as near as
387 may be, in equal shares, according to its value.

Fourthly. I give and bequeath to my husband, the said John R. B. Rodgers, the use of my household and kitchen furniture and house linen during his natural life; and, subject to such his right to use the same, I give and bequeath the same, and every part thereof, to my four children before named, to be divided equally between them, according to its value, share and share alike, and from and after his decease to be possessed and enjoyed by them, respectively, as their own individual and absolute property.

Fifthly. My carriages, horses, cows, and farming-utensils I give and bequeath to my said husband, absolutely, and as his own individual property.

Sixthly. I give, devise, and bequeath all the real estate in the township of Newark, in the State of New Jersey, whereof my late husband, the said James R. Smith, died seized or possessed, (and which, in and by the aforesaid codicil to his last will and testament he devised to me for life, with power and authority to me, by my last will and testament, to devise the same to all or any of his and my children, in fee-simple, absolute, as herein recited,) unto the before-named Jeanet Clarke,
Hannah Clarke, James C. R. Smith, and Elizabeth Smith, the
388 four children of the said James R. Smith and me, the said Hannah Rodgers, (to be equally divided between them, share and sha' alike,) in fee-simple, absolute: To have and to hold the same, and every part and parcel thereof, unto them, the said Jeanet Clarke, Hannah Clarke, James C. R. Smith, and Elizabeth Smith, their heirs and assigns, and to their only use, benefit, and behoof, forever, as tenants in common, and not as joint tenants.

Seventhly. All the rest and residue of my estate, of whatever kind or nature, and wheresoever found or situate', I give, devise, and bequeath unto my four children above named, to be equally divided between them, share and share alike: To have and to hold the same, and every part and parcel thereof, unto them and their respective heirs, executors, administrators, & assigns forever, as tenants in common, and not as joint tenants.

Lastly. I nominate and appoint my friends, Robert S. Robertson, of the city of New York, merchant, and Peter W. Radcliff, of the same place, counsellor at law, executors of this my last will and testament, hereby revoking and annulling all former wills and testaments by me made, and declaring this, and no other to be my last will and testament.

389 In witness whereof I have hereunto set my hand and seal, this

twelfth day of July, in the year of our Lord one thousand eight hundred and twenty-one.

HANNAH RODGERS.

Signed, sealed, published, and declared by the above-named Hannah Rodgers, as and for her last will and testament, in the presence us, who, at her request, and in her presence, and also in presence of each other, have subscribed our names as witnesses thereto.

MARGARET CANFIELD.
JEMIME C. BALL.
ROB. H. CUMMING.

I, John R. B. Rodgers, of Newark, in the State of New Jersey, physician, having seen and examined the preceding instrument in writing purporting to be the last will and testament of Hannah Rodgers, my wife, late the widow of James R. Smith, of the city of New York, merchant, deceased, bearing even date herewith, and duly executed by and under the hand and seal of her, the said Hannah, do hereby declare my assent to the correctness of the several recitals therein contained, and admit that the same was made and executed as aforesaid, with my full consent and approbation; and I do accordingly hereby ratify and confirm the same.

Given under my hand and seal this twelfth day of July, in the year of our Lord one thousand eight hundred and twenty-one.

390 JOHN B. R. RODGERS.

Signed, sealed, and delivered in the presence of (the words "and executed as aforesaid" being first interlined)—

MARGARET CANFIELD.
JEMIME C. BALL.
ROB. H. CUMMING.

(Endorsed:) The last will and testament of Mrs. Hannah Rodgers, dated July 12th, 1821. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 2. Knox & Mason, sol'rs for def's.

391 Know all men by these presents that I, Jeanet Clarke, one of the heirs and devisees of James R. Smith, late of the city of New York, deceased, and also of Hannah Rodgers, late Hannah Smith, of Newark, in Jersey, deceased, do hereby constitute Mathew St. Clair Clarke, of Washington City, my true and lawful attorney in fact, for me and in my name to divide, select, apportion, and set apart the estates of said James and Hannah, in conjunction with the other heirs, and to accept for me such division or allotment of said estates as he may select, and to buy the same for me if necessary, or in conjunction with, or separate from, the other heirs, to sell and dispose of my interest in either or any part of said estates; and to give and execute all such deeds, acquit'ances, releases, receipts, or other writings as shall be necessary to confirm the estates to the other heirs, or to purchasers thereof, or any portion thereof, or to release and settle with the executors of the said James and Hannah, or either of them, and to accept and receive for me all such deeds, receipts, or other writings, as shall be made by the other heirs, or any other person, for the purpose of effecting a division of both said estates among the heirs without the injury which would accrue were the same all converted into moneyed instruments, so that each heir shall hold their share or portion in sever-

alty, the same as if the same had been converted into cash. And I do hereby direct that two-thirds of my share of the estate of
392 said James shall remain in the hands of said Mathew, as the same may be sold from time to time, the interest whereof, when invested, shall be paid when demanded by me. And, finally, I empower the said Mathew to do all such acts as shall be required by any person to effect the division of said estates and make a settlement with the executors and heirs of said James and Hannah, either for moneys already paid or which may become due. And I do hereby covenant to execute, in consideration of his acceptance of the aforegoing trusts, such other deeds or instruments of writing as may be deemed necessary to carry the same into full effect.

In testimony whereof I have hereto set my hand and seal this twenty-fifth day of September, anno Domini one thousand eight hundred and twenty-nine.

JEANET CLARKE. [L. S.]

Signed, sealed, and delivered in presence of—
M. ST. C. C. LIND.
DAVID FULLERTON.

PENNSYLVANIA, *ss:*

Be it remembered that, on this 6th day of October, anno Domini one thousand eight hundred and twenty-nine, personally came before me, John B. Gibson, chief-justice of the Commonwealth above named, Mrs. Jeanet Clarke, to me personally known as the grantor in the above instrument of writing, and did acknowledge the same to be her act and deed.

393 In testimony whereof I have hereto set my hand and affixed my seal the day and year above written.

JOHN B. GIBSON. [L. S.]

Recorded the preceding, at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 minutes past 11, a. m.

MORRIS FRANKLIN,
Deputy Register.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the fourteenth day of April, 1830, at 11 o'clock 45 minutes a. m., in liber of conveyances 260, page 394, a' certify the same to be a correct transcript therefrom, and the whole of said instrument.

I further certify that there is no official seal belonging to this office.

Dated this thirtieth day of July, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) Jeanet Clarke to Mathew St. Clair Clarke. Dated September 25th, 1829. Power of attorney. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 3. Knox & Mason, def'ts' att'ys.

394 This indenture, tripartite, made this fifteenth day of November, anno Domini, one thousand eight hundred and twenty-nine, between James Boorman and Mathew Saint Clair Clarke, surviving execu-

tors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew St. Clair Clark her attorney in fact, Mathew Saint Clair Clarke, Anna R. Clarke, his wife, and Joseph Duncan and Elizabeth C., his wife, legatees and devisees under the said will of the said James R. Smith, deceased, of the second part; and James C. R. Smith of Newark, Jersey, also a devisee and legatee of said James R. Smith, deceased, of the third part, witnessseth: That, whereas said testator, James R. Smith, in his said last will and testament, did authorize his executors, or the survivors of them, in their discretion, to sell, in fee-simple, or otherwise, according to the nature of his estate at the time of his decease, at public auction or at private sale, the whole or any part of his real or personal estate; and in a codicil thereto annexed did ratify and confirm his said will, and after divers devises and bequests, all the residue of his estate, of what soever kind or nature, he gave, devised, and bequeathed unto his said executors, in trust, that the same should be equally divided to and amongst his four children, share and share alike, and to their respective *liens*; and whereas the said testator directed that
395 his son, James, should not come to the full possession and enjoyment of his portion of the estate until the age of twenty-five years, nor have power to pawn, pledge, mortgage, or dispose of the same until that age; and whereas, the said parties of the second part are now all of lawful age, and the said party of the third part is over the age of twenty-five years, and is entitled to demand from said executors his one-fourth part of said estate; and whereas the residue of said estate, after having paid the debts by sale of part, is principally in real estate, and the said second and third parties are desirous to avoid the sacrifice which would follow the sale of said estate by the executors; and the said second and third parties hereto, by universal consent, have parted and divided and valued said estate in equal parts in kind, as by reference to articles of agreement, dated first of October, one thousand eight hundred and twenty-nine, will appear; and whereas, the said second party hereto do consent and agree to join the first party in conveying and confirming to said third party all the hereinafter described real estate so parted, divided, and valued, to him as so much money; and whereas, the said third party agrees to accept and receive the same as his one-fourth part of said estate; and whereas, the said one-fourth part amounts for that part of the real estate which lies out of the city of New York, to twenty thousand five hundred and
396 ninety-two dollars and twenty-four cents, and for that part lying in said city, to nine thousand three hundred and sixty dollars, the said third party having received out of the estate heretofore more than the other heirs: Now, therefore, the said first party, for these good considerations, and in pursuance of the agreement above mentioned, and in consideration of the sum of twenty thousand five hundred and ninety-two dollars and twenty-four cents, the valuation as aforesaid of real estate out of the city of New York, as parted and divided to said third party, and which said sum he, the said third party, hereby acknowledges to have received from the said first party as and for his portion of the said real estate last aforesaid, and hereby acquits and discharges said parties of the first and second parts, their heirs, executors, and administrators, forever, from any claim or demand whatsoever to or for any other part or portion of said real estate out of the city of New York; and in consideration also, of the sum of nine thousand three hundred and sixty dollars, the valuation as aforesaid, of the said real estate in the city of New York as parted and divided to said third party,

and which said sum he, the said third party, likewise acknowledges to have received from said first party as and for his portion of said real estate lying in the city of New York, and hereby acquits and discharges the said first and second parties in like manner as mentioned with regard to the real estate out of the said city; and for the further consideration of five dollars to the said first party in hand paid by
397 the said third party, they the said first party named have granted, bargained and sold, released, conveyed, and confirmed, and by these presents do grant, bargain, and sell, release, convey, and confirm unto the said party of the third part, his heirs, and assigns, all and singular the following described lots, tracts, and parcels of ground out of the city of New York, to wit: In great lot number one hundred and thirty-seven, Chemung Township, Tioga County, State of New York—subdivision number two, east part, and number three, containing one hundred and fifty-six acres thirty perches, being that tract of land now contracted for by William Evert; subdivision number four, east half; now contracted for by Phineas Rodgers; subdivision number five, containing seventy-seven acres two roods twenty-one perches; subdivision number thirteen, containing one hundred and seventeen acres two roods sixteen perches. In the Hardenburg patent, fifth allotment, subdivision number three, great lot number six, Ulster County—subdivision two hundred and fifty-one, containing one hundred and thirty one acres three roods; subdivision number two hundred and sixty-two containing one hundred and thirty acres three roods; and subdivision number two hundred and seventy-three, containing one hundred and thirty-four acres one rood. In great lot number one hundred and forty-nine, in Erin Township, in the county of Tioga, the following subdivisions, to wit: number four, containing one hundred and twelve acres one rood
398 twenty-nine perches; number thirteen, west part, containing fifty-three acres one rood eight perches. In great lots numbers one hundred and nine, one hundred and ten, and one hundred and thirteen, in the old town of Chemung, the following subdivisions, to wit: number one, containing eighty-six acres and ten perches; lot number five, containing eighty-two acres, two roods; lot number fourteen, containing one hundred acres; lot number fifteen, containing fifty-six acres; lot number sixteen, containing sixty acres one rood. In Randolph Township, Broome County, the following, the lots, to wit: In great lot number fifteen, subdivision number five, containing eighty acres; great lot number seventeen, subdivisions numbers one, two, and eight, each containing eighty acres; great lot number twenty-two, subdivision number four, containing eighty acres; great lot number twenty-seven, subdivisions number four, containing eighty acres, and number eight containing eighty acres, including the waters of the lake. In township number seven, Franklin County, in great lot number twelve, subdivision number four, containing eighty-two acres one rood, as in the general division, but really containing, as per map in book of Isaac Sebring's agency, one hundred and eleven acres six perches. In great lot number forty-five, a subdivision of sixty nine acres one rood, contracted for by Joel Griffin, and a subdivision of the remaining one hundred and sixty-seven acres two roods nineteen perches, denominated the north-east quarter, containing forty-one acres three roods twenty-four
399 perches. In great lot number fifty, subdivision of fifty acres, contracted for by Winthrop Foye; forty-seven acres, called the Otis tract; and a lot called the southeast section, or number four, on Sebring's map, containing eighty-two acres and one rood. In great lot number fifty-nine, subdivision number two, being north half of the

Chamberlain lot, one hunderd *one hundred* and forty acres. In great lot number seventy-five, the southwest one-fourth part, containing one hundred and ninety-five acres one rood and two perches. In great lot number ninety, subdivision number four, containing one hundred acres; and number six, containing one hundred and three acres and one rood. In great lot number six, in Clinton County, southeast quarter, containing one hundred and fifty-seven acres two roods seventeen perches. In great lot number twenty-seven, as above, the south quarter, containing one hundred and eighty-four acres three roods twenty-seven perches and a half perch. In great lot number fifty-seven, as above, the southwest quarter, containing one hundred and seventy-nine acres three roods and sixteen perches. In great lot number sixty-six, as above, the southeast quarter, containing two hundred and twelve acres two roods and twenty-eight perches. In great lot number sixty-nine, as above, the southeast quarter, containing one hundred and fifty-nine acres one rood three perches. In great lot number eighty-four, as above, the southwest quarter, containing one hundred and sixty-eight acres,
400 seventeen and a half perches. In great lot number thirteen, in township number four, Clinton County, the northeast quarter, containing one hundred and sixty acres. In great lot number seventy-six, Old Fabius, in the county of Cortland, subdivision' numbers five and six, contracted for by George Hays, containing together one hundred and ten acres eighty-three hundre'ths. In great lot number two Camillus, in the county of Onondaga, subdivision number six, contracted for by Hugh McMullen, containing fifty acres; and subdivision number eleven, containing fifty acres twenty-nine hundre'ths. In township number twelve, Watkins & Flint's purchase, Tioga County, near Owego, east half of number twelve, containing one hundred and two acres three roods and twelve perches; and lot number sixteen containing one hundred and sixty-three acres three roods twenty-four perches. In the northwest section of township number nine, in Watkins & Flint's purchase, in Tioga County, subdivision number one, containing two hundred and two acres; and number two, containing one hundred and one acres, contracted for by Joseph and James Y. Hinds. In township number six, Tioga County, Watkins & Flint's purchase, north part, southwest section, lot number thirty-five, containing two hundred and two acres. In great lot number seventeen, Fayette, (now Easton,) subdivision of northwest quarter, containing one hundred and sixty acres. In great lot number one hundred and seventy-three, Old Chemung, Tioga County, subdivision number two, containing one hundred and thirty-four acres; subdivision number five, con-
401 taining one hundred twenty-six acres; subdivision number nineteen, containing ninety-three acres; subdivision number seven, containing one hundred and fifteen acres; subdivision number twenty; containing one hundred and two acres. In northeast section, township number one, Watkins & Flint's purchase, Tioga County, lot number one, containing two hundred and sixteen acres and thirty-two hundre'ths; number four, containing ninety-six acres; number fourteen, containing one hundred and three acres, sixty-four hundre'ths; number seventeen, containing one hundred and two acres, eighty-seven hundre'ths; number twenty-one, containing one hundred and two acres seventy-seven hundre'ths; number twenty-three, containing ninety-eight acres seventy-three hundre'ths; number twenty-four, containing ninety-seven acres eighty-five hundre'ths; number twenty-five, containing ninety five acres seventy-two hundre'ths; number thirty, containing ninety-seven acres sixty-three hundre'ths; number thirty-seven,

north half, containing forty-eight acres six hundre'ths; number thirty-nine, containing one hundred and six acres fifty-seven hundre'ths; number forty-five, containing ninety three acres fifty-eight hundre'ths; number fifty-two, containing one hundred and ten acres seventy hundre'ths; number fifty-three, containing one hundred and eleven acres seven hundre'ths. All of which several lots of land are to be holden as surveyed or divided, be the same more or loss. And all and singular the lots of ground, with their improvements and appurtenances, hereinafter described, lying within the limits of the city of New York:

402 Lot number eight hundred and seventeen on the plan of the city, fronting on Eldridge street, between Rivington and Delancey streets, bounded on the south by lot of Joseph Duncan and wife, and on the east by M. S. Clarke, being twenty-five feet in front and about ninety feet back, being half of the distance to Allen; lot number two hundred on the plan of the city, fronting on Elizabeth street about twenty-five feet, and running back about ninety feet, be the same more or less, adjoining Joseph Duncan on the north, and Jeanet Clarke on the south, being thereon erected a frame-house; in the great lot lying between Fifth and Sixth avenues, and embracing part of the Seventeenth, Eighteenth, and Nineteenth streets, designated as the John Kerr lots, numbers eight, nine, ten, twenty-two, twenty-three, twenty-four, thirty-three, thirty-seven, thirty-nine, fifty-four, fifty-five, fifty-eight, fifty-nine, sixty-eight, sixty-nine, seventy-two, seventy-eight, seventy-nine, eighty-three, eighty-four, ninety-three, ninety-four, ninety-seven, ninety-eight; in the great lots numbers twenty-eight and thirty-two, designated as the Stewart lots, and situated between Twenty-six' and Twenty-seventh streets, and subdivided into eight lots, lots number' four and five being each about twenty-four feet ten inches in front, and about two hundred and forty feet deep, the said lots being taken by their designation, be their contents more or less. And they the said parties of the second part, do hereby ratify, consent to, and con-

403 firm the said sale, and remise, release, and quit-claim unto him the said party of the third part, his heirs and assigns forever, all the right, title, interest, claim, and demand whatsoever of them the said parties of the second part, and each of them, of, in, and to all and singular the said premises, with the hereditaments and appurtenances: To have and to hold the said hereby granted and described premises, and every part and parcel thereof, with the appurtenances, unto the said party of the third part, his heirs and assigns, to his only proper use, benefit, and behoof forever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

J. BOORMAN, [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Ex'rs of J. R. Smith.
JEANET CLARKE,
By her att'y, M. S. CLARKE. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of (the word "November," and the words "and the said second and third parties are desirous to avoid the sacrifice which would follow the sale of said estate by the executors,"

on the first page; the words "eight," "purchase," and "south," on the second page; the words "Watkins & Flint's purchase, Tioga County, near O'wego, east half of number twelve," 13th line, 3d page; the word "then," on the 15th line; the words "one," "one," 17th line, 3d page; and the words "part," and "part," on the 5th and 6th
404 lines, 4th page, being first interlined)—

W. CRANCH, as to all but J. C. R. Smith and wife, and James Boorman.

R. C. LUDLOW, as to James Boorman.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, personally came before me, William Cranch, chief judge of the circuit court of the United States for said District, Mathew St. Clair Clarke, executor as aforesaid, and as attorney in fact for Jeanet Clarke, and also grantor in his own right, and Joseph Duncan, grantors aforesaid, to me personally known as such, and did severally acknowledge the aforegoing instrument of writing to be their act and deed. And at the same time, came also Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known as party grantors in the aforegoing deed, who, being of full age, and by me examined separate and apart from their said husbands, and the contents of the aforegoing instrument being made known to them, did declare that they freely and voluntarily did sign, seal, and deliver said instrument as their act and deed, without any coercion or compulsion of their said husbands.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York, ss:

On the ninth day of March, in the year of our Lord one thou-
405 sand eight hundred and thirty, before me, personally came and appeared James Boorman, esq'r., executor, &c., known to me to be the same person described in, and who executed the above instrument of writing, who duly acknowledged that he executed the same. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City & County N. Y.

Recorded the preceding at the request of P. W. Radcliff, this 20th of May, 1830, at 39 min, past 3 p. m.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 20th day of May, A. D. 1830, at 3 o'clock and 39 min. p. m., in liber No. 263 of conveyances, page 184, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

JOHN KEYSER, *Register.*

Dated this 14th day of October, 1862.

(Endorsed:) James Boorman and others to James C. R. Smith. Dated November 15th, 1829. U. S. circuit court. Clarke vs. Executors

of Boorman. Exhibit No. 4. Knox & Mason, def'ts' sol'rs. Deed Filed Sept. 12, 1871.

406 This indenture, made this fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, between Robert Dyson, of the city of New York, of the first part, and Mathew St. Clair Clarke, of Washington City, and Anna R. Clarke, his wife, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of eight thousand nine hundred and forty-eight dollars and sixty-eight cents, lawful money of the United States of America, to him in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the second part, their heirs, executors, and administrators, forever released and discharged from the same, by these presents hath granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and, by these presents, doth grant, bargain, and sell, remise, release, enfeoff, and confirm, unto the said parties of the second part, their heirs, and assigns, all and singular the lots or parcels of ground situate in the State of New York, and described as follows, to wit: In Randolph Township, Broome County, lots 1, 2, 7, and 8, in subdivision of great lot
407 No. fifteen, containing each eighty acres, and contracted for to Marcus Sage; in Old Chemung, Tioga County, in subdivision of great lots numbers one hundred and nine, one hundred and ten, and one hundred and thirteen, lot No. 4, containing one hundred and six acres and two roods, and contracted for to Baret W. Johnson; in township number seven, Franklin County, subdivision number forty-five, 25 acres, contracted for to Justin Day; in subdivision number fifty, a lot containing 50 acres, contracted for to Edson Huntington; and one other lot containing 50 acres, in said lot number 50, contracted for to Reuben Gillet; in great lot number seventy-six, Fabius, Courtland County, subdivision No. 8, containing fifty-six acres, contracted for to Ebenezer Whitemarsh; in great lot No. 2, Camillus, in the county of Onondaga, subdivision No. 7, containing fifty-three and a half acres, contracted for to Messrs. Toll and Lakin; subdivision No. 10, being the south-half, containing twenty-five acres and eight-hundredths of an acre, contracted for to Henry Spores; and subdivision No. 5, containing fifty acres, contracted for to H. & B. Weston; also the east-half of subdivision No. 8, of great lot number one hundred and thirty-seven, Chemung, Tioga County, containing fifty-eight acres three roods and eight perches; also, subdivi-
408 sion number 14 in said lot, containing one hundred and seventeen acres two roods and sixteen perches; subdivision No. 8 in great lot number one hundred and seventy-three, Chemung, Tioga County, containing one hundred and four acres; also, subdivision No. 9, containing ninety-seven acres, in great lot number one hundred and forty-nine, same county and town; subdivision No. 7, in great lots numbers one hundred and nine, one hundred and ten, and one hundred and thirteen, in Chemung, Tioga County, containing ninety-eight acres; subdivision No. 2, being the northwest quarter of great lot number twenty-seven, in township number six, Clinton County, containing one hundred and eighty-four acres three roods and twenty-seven and a half perches; subdivision No. 34, in the north part of the southwest section of township number six, in Watkins and Flint's purchase, containing one hundred and forty-two acres; subdivision, being the west-half of lot No. 12, in the third section of township number twelve, in Watkins and Flint's purchase, near Owego, containing one hundred and two acres three

roods and twelve perches; subdivision No. 1 of great lot number ninety, in township number seven, Franklin County, containing one hundred acres; subdivision called the Bidwell lot, part of great lot number fifty-nine, in said last-mentioned township, containing one hundred and
409 three acres and twenty perches; subdivision No. 1, on northwest quarter of great lot number fifty, in said county, containing eighty-two acres and one rood; in Tioga County, northe'st section of township number one, of Watkins and Flint's purchase, the following subdivisions, viz: No. 2, containing twenty-one acres; No. 16, containing ninety-eight acres and twenty-six-hundre'ths of an acre; No. 29, containing ninety-six acres and five-hundredths of an acre; No. 40, containing one hundred acres; and No. 49, containing one hundred and five acres and forty-five-hundredths of an acre. All and singular the said lots of land to be taken and held by the several aforegoing descriptions, be the contents more or less; and also, all *all* and singular the lots or parcels of ground, with their improvements and appurtenances, situate within the city of New York, known and described as follows, to wit: Lot number 827, in the plan of the city, on Allen street, adjoining Jeanet Clarke on the north side, being twenty-five feet front, and running back one-half the distance through to Eldridge street; a lot on Forsyth street, known in the plan of the city as number 652, being twenty-five feet front and one hundred feet deep; lot number 656, on Eldridge street, and being the lot of the estate aforesaid farthest from the corner of Stanton street in that square, being twenty-five feet front
410 and one hundred feet deep; in great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing part of Seventeenth, Eighteenth, and Nineteenth streets, lot number 16 in the subdivision thereof; and fractional lots Nos. 43, 44, 45, 46, 105, 36, and 38, as designated on a map drawn by George B. Smith, city-surveyor, bearing date the 19th October, 1829. All and singular the said lots being granted and taken by the description thereof, be the contents more or less: To have and to hold the said several lots, pieces or parcels of ground, with their appurtenances, to them, the said Mathew St. Clair Clarke, and Anna R. Clarke, his wife, and to the heirs and assigns of her, the said Anna R. Clarke, forever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

ROBERT DYSON. [L. S.]

Sealed and delivered in the presence of—
ROBERT C. LUDLOW.

STATE OF NEW YORK.
City and County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me personally appeared Mr. Robert Dyson, known to me to be the same person described in and who executed the above deed, and duly acknowledged that he executed
411 the same. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City & County of New York.

WASHINGTON CITY, 1 *April*, 1830.

I have perused the acknowledgment opposite to this and hereby assent to the correctness of the same, and unite in the request that the same may be entered of record.

New York, 8 April, 1830.

ROBERT DYSON.

I do hereby acknowledge that the consideration named in the aforegoing deed is erroneous, and ought to have been ten thousand eight hundred and twenty-eight dollars and twenty-eight cents, and desire this note to entered of record, inasmuch as it does not make any error in the deed, but is intended to explain the correct division of the estate.

M'W ST. CLAIR CLARKE.

Recorded the preceeding at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 minutes past 11 a. m.

MORRIS FRANKLIN,
Deputy Register.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the fourteenth day of April, 1830, at 11 o'clock 45 minutes a. m., in liber of conveyances 260, page 418, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this
412 office.

Dated this 30th day of July, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) Robert Dyson to Mathew St. Clair Clarke, and Anna R. Clarke his wife. Dated November 15th, 1829. U. S. circuit court. Clarke vs. executors of Boorman. Exhibit No. 5. Knox & Mason, def'ts' sol'rs. Deed. Filed Sept. 12, 1871.

413 This indenture, tripartite, made the fifteenth day of November, one thousand eight hundred and twenty-nine, between James Boorman and Mathew Saint Clair Clarke, surviving executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew Saint Clair Clarke, her attorney in fact, Mathew Saint Clair Clarke and Anna R. Clarke, his wife, of Washington City, and James C. R. Smith and Julia M. Smith, his wife, of Newark, New Jersey, of the second part; and Joseph Duncan and Elizabeth C. Duncan his wife, late Elizabeth C. Smith, of the third part—all of said second and third parties being heirs and devisees of James R. Smith, aforesaid, witnesseth: Whereas said testator, James R. Smith, in his last will and testament, did authorize his executors, or the survivors of them, in their discretion, to sell in fee-simple or otherwise, according to the nature of his estate at the time of his decease, at public auction or private sale, the whole or any part of his real or personal estate; and in a codicil thereto annexed, did ratify and confirm his said will; and, after divers bequests and devises, all the residue of his estate, of whatever kind or nature, he gave, devised, and bequeathed unto his said executors in trust, that the same should be equally divided to and amongst his four children, share and share alike, and to their respective heirs; and whereas said testator did direct and declare that his daughters, Jeanet,

Anna, and Elizabeth, if she should attain the age of twenty-one years, (and which she has now attained,) should have the privilege of expending and appropriating, with the consent of the executors, one third part of their respective portions, as they may think proper, and over which, when so [Corner of leaf of record torn off.] priated, they are to have absolute control; and whereas [Corner of leaf of record torn off.] ts of the estate are all paid, and the residue of said estate consists principally in real estate; and whereas the said daughters of the said testator are now desirous to appropriate their respective one-third parts of the said estate, and the executors aforesaid are willing that they shall do so; and whereas it is universally admitted by all the said heirs and devisees, that a sale of said estate to convert it into money would be very injurious to all concerned; and whereas, by agreement among said heirs, the whole of the said real estate has been parted, divided, and valued in four distinct and equal parts; and whereas that part of the real estate lying out of the city of New York, and parted and divided as one-third part of the one-fourth part, devised and belonging to said parties of the third part in right of the said Elizabeth C. Duncan, as estimated at six thousand eight hundred and forty-four dollars and fourteen cents, and that part of it lying in the city of New York divided as one third of the one-fourth part thereof to said parties of the third part, in the same right, is estimated at three thousand nine hundred and seventeen dollars and thirty-one cents and one-third, after deducting the moneys coming to said third party, on account of the estate of Mrs. Hannah Rodgers, late Hannah Smith, deceased; and whereas it has been agreed by and between the said parties of the second and third parts, respectively, that the said parties of the first part should grant and convey to the said parties of the third part, in manner hereinafter contained, all and singular the lands and premises hereinafter mentioned and described, as, and for, and in full satisfaction of the said one-third part of the portion of her, the said Elizabeth C. Duncan, so authorized to be appropriated, and over which when so appropriated, she was to have absolute control as aforesaid; and the said parties of the first part have accordingly consented and agreed to make such grant and conveyance thereof: Now, therefore, the said parties of the first part, for the good considerations, and in pursuance of the agreement abovementioned, and also in consideration of the sum of six thousand eight hundred and forty-four dollars and fourteen cents, the valuation as aforesaid of the said share or portion of the real estate out of the city of New York, as parted and divided to the said third party, and which said sum they, the said third party, hereby acknowledge to have received from the said first party, as and for the said portion of said real [Corner of leaf of record torn off.] estate last af and hereby acquit and discharge said parties of the first an parts, their heirs, executors, and administrators, forever from any or demand whatsoever to or for any other part or portion of said estate out of the city of New York; and inconsideration of the sum of three thousand nine 414 hundred and seventeen dollars and thirty-one cents and one-third as aforesaid, the valuation as aforesaid of the said share or portion of the said real estate in the city of New York, deducting as aforesaid, the moneys due to them as heirs of Mrs. Hannah Rodgers, as parted and divided to said third party, and which said sum they, the said third party, likewise acknowledged to have received from the said first party, as and for the said portion of the said real estate lying in the city of New York, and do hereby acquit and discharge the said first and second parties in like manner as mentioned, with regard to the real estate out

of the city of New York; and for the further sum of five dollars to the said first party in hand paid by the said third party, they, the said third party, they, the said first-named party, have granted, bargained, and sold, released, conveyed, and confirmed, and do hereby grant, bargain and sell, release, convey, and confirm unto the said party of the third part, all and singular the following-described lots, tracts, and parcels of ground out of the city of New York, to wit: In great lot number one hundred and thirty-seven, Old Chemung, Tioga County, subdivision number one, contracted for by William McKinstry, containing forty-five acres; and subdivision number eleven, called Epenetus Owen tract, containing one hundred and three acres. In subdivision of great lots numbers one hundred and nine, one hundred and ten, and one hundred and thirteen, in Old Chemung, Tioga County, lot number two, contracted for by Benjamin F. Bird, containing eighty-three acres one rood twenty-eight perches; lot number nine, west half, contracted for to Phenias R. Bird, containing fifty acres. In great lot number forty-seven, in township number seven, Franklin County, a lot containing forty acres, and contracted for to Hunan Crippen, as by map in the agency of Isaac Sebring. In great lot number one hundred and seventy-three, Old Chemung, lot number one, contracted for to Smith and Bensley, containing one hundred and fifty-three acres; lot number twelve, in the above subdivision, containing ninety-five acres; in great lot number two, Camillus, in the county of Onondaga, subdivision number two, contracted for to Elijah Weston, containing thirty acres; subdivision number eight, contracted for to Ralph Russ, containing fifty acres twenty-seven one hundredths. In northeast section of township number one, Watkins and Flint's purchase, subdivision number thirty-two, containing one hundred and one acres and seventy-five one hundredths; number thirty-three, containing one hundred and one acres and twenty-one hundredths; number forty-six, containing ninety-eight acres and sixty-four hundredths; number forty-eight, containing one hundred and seven acres. In great lot number seventeen, Fayette, (now Easton,) the subdivision, being the northeast quarter, containing one hundred and sixty acres. In the Hardenburg patent, fifth allotment, subdivision number three, great lot number six, Ulster County, lot number two hundred and thirty-six, containing one hundred and nineteen acres and one rood. In subdivision of great lots numbers one hundred and nine, one hundred and ten, and one hundred and thirteen, in Old Chemung, Tioga County, lot number twelve, containing one hundred acres. In township number six, Clinton County, number twenty-seven, south-east quarter thereof, containing one hundred and eighty-four acres three roods twenty-seven and a half perches; in township number seven, Franklin County, lot number fifty nine, the subdivision thereof, called the Munson lot, containing one hundred acres; in lot number fifty, in aforesaid county, the subdivision known as the southwest part or number three, containing eighty-two acres and one rood. In great lot number one hundred and forty-nine, in Tioga County, subdivision number fourteen, containing one hundred acres two roods and sixteen perches; and in township number twelve, Watkins and Flint's purchase, the east half of subdivision number thirteen, containing one hundred and two acres three roods and twenty and a half perches. All of which several lots of land are to be holden as surveyed and divided, be the same more or less. And also, all and singular the lots and houses thereon, with the appurtenances, situated in the city of New York, to wit: A lot of ground situate in Elizabeth street, and known on the plan of the city as lot number 201, being the third from the corner of Grand street,

lying between lots No. 202 and number 200, the property of Mathew S. Clark and wife, and James C. R. Smith, about twenty-four feet front and ninety feet deep. Certain lots in great lot lying between the Fifth and Sixth avenues, and embracing part of Seventeenth, Eighteenth, and Nineteenth streets, and designated on subdivision thereof as lots numbers nineteen, five, sixty-four, sixty-five, eighty-seven, eighty-eight, and twenty-one; and in the great lots numbers twenty-eight and thirty-two, designated as the Stewart lots, and situated between Twenty sixth and Twenty-seventh streets, and subdivided into eight lots; lots numbers three and eight, being about twenty-four feet ten inches in front, and running back about two hundred and forty feet. The said lots being taken by their designations, be their contents more or less. And they, the said parties of the second part, do hereby ratify, consent to, and confirm the said sale and remise, release, and forever quit-claim unto the said parties of the third part, their heirs and assigns, all the right, title, interest, claim, and demand whatsoever of, in, and to
415 all and singular the said premises, with the hereditaments and appurtenances: To have and to hold the said hereby granted and described premises, and every part and parcel thereof, with the appurtenances, unto the said parties of the third part, and the heirs, and assigns of the said Elizabeth C. Duncan, one of the said parties, to their owen use, benefit, and behoof forever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

J. BOORMAN, [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Executors of James R. Smith.
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JEANET CLARKE,
By her attorney, M. S. CLARKE. [L. S.]

Sealed and delivered in the presence of (the word "November," 1st line, and the word "by," 5th line; the words "and Julia M. Smith, his wife," 6th line, 1st page; the word "lot" on the second page, and the words "No. 202 and No. 200," 8th line, 3d page, being first interlined)—

R. C. LUDLOW, as to J. C. R. Smith and Julia M. Smith.
W. CRANCH, as to all but J. C. R. Smith and wife, and James Boorman.
R. C. LUDLOW, as to James Boorman.

STATE OF NEW YORK,
City and County of New York, ss:

On the eighteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me personally appeared J. C. R. Smith, esq'r, and Julia M., his wife, the former known to me, and the latter proved to my satisfaction by the oath of Robert Dyson, esq., of the city of New York, merchant, who, being duly sworn, saith that she is the person described in and who executed the above instrument of writing, and they duly acknowledged that they executed the same for the uses and purposes therein mentioned; and the said Julia M. Smith, being examined by me privately and apart from her said hus-

band, confessed that she executed the same freely and without any fear or compulsion of her said husband. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City and County of N. York.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini eighteen hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court for said district, personally came Mathew St. Clair Clarke, executor, and as attorney in fact for Jeanet Clarke, and also in his own right, and Joseph Duncan, to me known as the grantors within named, and did severally acknowledge the aforegoing instrument of writing to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known as grantors within named, who, being severally of full age, and by me examined separate and apart from their said husbands, confessed that they severally executed the aforegoing deed, the contents whereof were made known to them freely, and without any fear or compulsion of their said husbands.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me personally came and appeared James Boorman, esq., executor, &c., known to me to be the same person described in and who executed the within instrument of writing, who duly acknowledged that he executed the same. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City and County N. Y.

Recorded the preceding at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 minutes past 11 a. m.

MORRIS FRANKLIN,
Deputy Register.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the fourteenth day of April, 1830, at 11 o'clock 45 minutes a. m., in liber of conveyances 260, page 404, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 30th day of July, 1862.

JOHN KEYSER, *Register.*

(Indorsed:) James Boorman, &c., executors, and Jeanet Clarke, &c., to Joseph Duncan, &c. Dated November 15th, 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 6. Knox & Mason, sol'rs for def'ts. Deed. Filed Sept. 12, 1871. Hall, Clayton & Medole, printers, 46 Pine st., N. Y.

416 This indenture, tripartite, made this fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; James C. R. Smith, and Julia M., his wife, of Newark, New Jersey; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew St. Clair Clarke her attorney; Mathew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City; Joseph Duncan and Elizabeth C. Duncan, his wife, of Illinois, parties of the second part; and Robert Dyson, of the city of New York, of the third part, witnesseth that, for and in consideration of the sum of eight thousand nine hundred and forty-eight dollars and sixty-eight cents, lawful money, in hand paid by the party of the third part to the said parties of the first part, before the ensealing and delivery of these presents, the said parties of the first part, in pursuance of and by virtue of the power contained in the said last will and testament, have granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and, by these presents, do grant, bargain, and sell, remise, release, enfeoff, and confirm to the said party of the third part, his heirs, and assigns, all and singular the lots or
417 parcels of ground situate in the State of New York, and described as follows, to wit: In Randolph Township, Broome County, lots Nos. 1, 2, 7, and 8 in subdivision of great lot No. fifteen, containing each eighty acres, and contracted for to Marcus Sage; in Old Chemung, Tioga County, in subdivision of great lots numbers one hundred and nine, one hundred and ten, and one hundred and thirteen, lot No. 4, containing one hundred and six acres and two roods, and contracted for to Baret W. Johnson; in township number seven, Franklin County, subdivision number forty-five, 25 acres, contracted for to Justin Day; in subdivision number fifty a lot containing 50 acres, contracted for to Edson Huntington, and one other lot containing 50 acres, in said lot number fifty, contracted for to Reuben Gillet; in great lot number seventy-six, Fabius, Cortland County, subdivision No. 8, containing fifty-six acres, contracted for to Ebenezer Whitemarsh; in great lot number two, Camillus, in the county of Onondaga, subdivision No. 7, containing fifty-three and a half acres, contracted for to Messrs. Toll and Lakin; subdivision No. 10, being the south half, containing 25 acres and eight hundredths of an acre, contracted for to Henry Spores; and sub-
418 division No. 5, containing fifty acres, contracted for to H. & B. Weston; also, the east half of subdivision No. 8, of great lot number one hundred and thirty-seven, Chemung, Tioga County, containing fifty-eight acres, three roods, and eight perches; also, subdivision No. 14 in said lot, containing one hundred and seventeen acres two roods and sixteen perches; subdivision No. 8, in great lot number one hundred and seventy-three, Chemung, Tioga County, containing one hundred and four acres; also subdivision No. 9, containing ninety-seven acres, in great lot number one hundred and forty-nine, same county and town; subdivision No. 7 in great lots numbers one hundred and ten and one hundred and thirteen, in Chemung, Tioga County, containing ninety-eight acres; subdivision No. 2, being the northwest quarter of great lot number twenty-seven, in township number six, Clinton County, containing one hundred and eighty-four acres three roods and twenty-seven and a half perches; subdivision No. 34, in the north part of the southwest section of township number six, in Watkins and Flint's purchase, containing one hundred and forty-two acres; subdivision, being the west half, of lot No. 12, in the third section of township number twelve,

in Watkins and Flint's purchase, near Owego, containing one hundred and two acres three roods and twelve perches; subdivision No. 419 1 of great lot number ninety, in township number seven, Franklin County, containing one hundred acres; subdivision called the Bidwell lot, part of great lot number fifty-nine, in said last-mentioned township, containing one hundred and three acres and twenty perches; subdivision No. 1, or northwest quarter of great lot number fifty, in said county, containing eighty-two acres and one rood. In Tioga County, northeast section of township number one, of Watkins and Flint's purchase, the following subdivisions, viz: No. 2, containing twenty-one acres; No. 16, containing ninety-eight acres and twenty-six hundredths of an acre; No. 29, containing ninety-six acres and five hundredths of an acre; No. 40, containing one hundred acres; and number 49, containing one hundred and five acres and forty-five hundredths of an acre. All and singular the said lots of land to be taken and held by the several aforegoing descriptions, be the contents more or less; and, also, all and singular the lots or parcels of ground, with the improvements and appurtenances, situate within the city of New York, known and described as follows, to wit: Lot number *number* 827, in the plan of the city, on Allen street, adjoining Jeanet Clarke on the north side, being twenty-five feet front, and running back one half the distance through to Eldridge street; a lot on Forsyth street, known 420 in the plan of the city as number 652, being twenty-five feet front and one hundred feet deep; lot number 656, on Eldridge street, and being the lot of the estate aforesaid farthest from the corner of Stanton street in that square, being twenty-five feet front and one hundred feet deep; in great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing part of Seventeenth, Eighteenth, and Nineteenth streets; lot No. 16 in the subdivision thereof, and fractional lots Nos. 43, 44, 45, 46, 105, 36, and 38, as designated on a map drawn by George B. Smith, city-surveyor, bearing date 19th October, 1829. All and singular the said lots, being granted and taken by the descriptions thereof, be the contents more or less: To have and to hold the said several lots, pieces, or parcels, of ground, with their appurtenances, to him, the said party of the third part, his heirs and assigns forever, hereby vesting in him, the said third party, all the right and title which the said James R. Smith, deceased, in his life-time, had in and to the premises aforesaid. And the said parties of the second part do hereby ratify and confirm said sale, and do remise, release, and forever quit-claim to, all manner of right, title, interest, and demand, which any of them had in and to the said lots, pieces, or parcels of ground, with their appurtenances.

421 In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

J. BOORMAN. [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Executors of J. R. Smith.
JEANET CLARKE, [L. S.]
By M. S. CLARKE, *her Attorney.* [L. S.]
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of—
R. C. LUDLOW, as to the signatures of J. C. R. Smith, and Julia M. Smith, and James Boorman.
As to the others, in presence of—
W. CRANCH.

STATE OF NEW YORK,
City & County of New York, ss:

On the eighteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me, personally came and appeared J. C. R. Smith, esq'r, and Julia M., his wife, the former known to me, and the latter proved to my satisfaction to be the person described in and who executed the above instrument of writing by the oath of Robert Dyson, esq., of the city of New York, merchant, who, being duly sworn, deposeth and saith that she is the person mentioned in said instrument of writing; and they duly acknowledged that they executed the same. And the said Julia M. Smith, being examined by me privately and apart from her said husband, confessed that she executed the same freely and without any fear or compulsion of
422 her said husband. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City & County of New York.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, personally came before me, William Cranch, chief judge of the circuit court of the United States for said District, Mathew St. Clair Clarke, executor as aforesaid, and as attorney in fact for Jeanet Clarke, and also in his own right, and Joseph Duncan, to me personally known as grantors in the aforegoing deed, and did severally acknowledge the same to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known as party grantors, who, being of full age, and by me examined separate and apart from their said husbands, and the contents of said instrument being made known to them, did declare that they, freely and voluntarily, did sign, seal and deliver said instrument, as their act and deed, without any coertion or compulsion of their said husbands, or fear of their displeasure.

W. CRANCH.

423 STATE OF NEW YORK,
City & County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me personally came and appeared James Boorman, esq., executor, &c., known to me to be the same person described in and who executed the within instrument of writing, who duly acknowledged that he executed the same. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City and County of N. Y.

Recorded the preceeding at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 min. past 11 a. m.

MORRIS FRANKLIN,
Dep'y Register.

OFFICE OF THE REGISTER OF DEEDS, &C.
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 14th day of April, 1830, at 11 o'clock 45 min. a. m., in liber of conveyances 260, page 414, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

JOHN KEYSER, *Register.*

Dated this 30 day of July, 1862.

(Endorsed:) James Boorman, &c., executors, to Robert Dyson. Dated November 15, 1829. U. S. circuit court. Clarke vs Executors of Boorman. Exhibit No. 7. Knox & Mason, sol'rs for def'ts. Deed. Filed Sept. 12, 1871.

424 This indenture, tripartite, made this fifteenth day of November, one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; James C. R. Smith and Julia, his wife, of Newark, New Jersey; Mathew Saint Clair Clarke and Anna R., his wife, of Washington City; Joseph Duncan and Elizabeth C., his wife, of the State of Illinois, of the second part; and Jeanet Clarke, of the third part, witnesseth that, whereas, on settlement of accounts between the estate of Hannah Rodgers, late Hannah Smith, deceased, mother of said Jeanet, and the estate of James R. Smith, deceased, father of said Jeanet, the said estate of James R. Smith is indebted to the estate of Hannah Rodgers the sum of fourteen thousand six hundred and fifty-two dollars and twenty-two cents, as of the first day of this present month; and whereas, by the last will and testament of said Hannah, the said party of the third part is entitled to one-fourth part of said sum, to wit, three thousand six hundred and sixty-three dollars and five cents; and whereas the said party of the third part, as well as the parties of the second part, have agreed to take for said debt from said parties of the first part, certain lots of ground in the city of New York, at a fair valuation; and whereas, by agreement in writing by all the heirs of said James R. Smith and said Hannah Rogers, date the twenty-first day of October, one thousand eight hundred and twenty-nine, such valuation was made by James Boorman, Thomas Suffern, and Robert Dyson, esquire, of all the lots of ground belonging to the estate of James R. Smith; and whereas, from said valuation, the said party of the third part have selected and set apart the hereinafter described lots in full payment as aforesaid; and whereas, by the last will and testament of the said James R. Smith, duly proven and recorded, the said parties of the first part are duly authorized to sell any part, or all of the real estate of said James R. Smith: Now, therefore, the said parties of the first part, for and in consideration of the premises aforesaid, as well as the sum of three thousand six hundred and sixty-three dollars and five cents, lawful money, received by them from the said party of the third part, as a credit to the estate of James R. Smith, have granted, bargained, and sold, remised, released, conveyed, and confirmed, and do hereby grant, bargain, and sell, remise, release, convey, and confirm unto the said Jeanet Clarke, the party of the third part, all and singular the lots of ground, with their appurtenances, hereinafter particularly described, to wit: A lot of ground on Forsyth street, number six hundred and fifty-one, (651,) in plan of the city, described in said valuation

and division as lot number two, on Forsyth, adjoining M. S. Clarke and wife on the north, and Joseph Duncan and wife on the south, containing twenty-five feet front and one hundred feet deep, more or less, together with the houses thereon erected. And also lot number six hundred and fifty-five, (655,) and six hundred and 54, (654,) in the plan of the city, on Eldridge street, and numbered in said valuation and division of lots number six and number seven, on Eldridge street, adjoining Joseph Duncan and wife on the north, and M. S. Clarke and wife on the south. Also, in the subdivision of the great lot containing five acres and upwards between the Fifth and Sixth avenues, and lying on the Seventeenth, Eighteenth, and Nineteenth streets, fractional lots numbered fourteen, fifteen, eleven, and one; also lot numbered seventy-four: To have and to hold the said several lots of ground, with their improvements and appurtenances, to them, the said party of the third part, and to the heirs and assigns of her, the said Jeanet Clarke, to her own use, benefit, and behoof forever, hereby vesting in her the said Jeanet Clarke, all the right, title, and interest which the said James R. Smith in his life-time had in and to the said lots of ground, with the appurtenances. And the said parties of the first and second part do hereby ratify and confirm said sale, and remise, release, and forever quit-claim unto the said party of the third part, her heirs and assigns, all the right, title, interest, claim, and demand whatsoever of, in, and to all and every part of the premises herein granted and sold.

In witness whereof the said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

J. BOORMAN, [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Executors J. R. Smith.
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

425 Sealed and delivered in the presence of, (the words "Joseph Duncan and Elizabeth C., his wife, of the State of Illinois," on the 6th line, 1st page; the word "J'anet," on the 9th and 10th lines; the word "the," on the 36th line; and the word "one," on the 39th line; being first interlined)—

R. C. LUDLOW, as to the signatures of J. C. R. Smith, and Julia M. Smith, and James Boorman.

W. CRANCH, as to all but J. C. R. Smith and wife, and James Boorman.

STATE OF NEW YORK,
City and County of New York, ss:

On the eighteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me personally came and appeared James C. R. Smith, esq'r, and Julia M., his wife, the former known to me and the latter proved to my satisfaction to be the person described in and who executed the above instrument of writing by the oath of Robert Dyson, esq'r, of the city of New York, merchant, who, being duly sworn, deposeth and saith that she is the person mentioned and described in said instrument of writing, and they duly acknowledged that they executed the same; and the said Julia M. Smith being ex-

amined by me privately and apart from her said husband, confessed that she executed the same freely and without *and* any fear or compulsion of her said husband. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City and County of N. Y.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, one thousand eight hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court of the United States for said District, personally came Mathew St. Clair Clarke, executor of James R. Smith, and also in his own right, and Joseph Duncan, to me personally known as grantors in the aforegoing deed, and did severally acknowledge the aforegoing instrument of writing to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Jeseph, to me personally known as grantors in the aforegoing deed, who, being of full age and by me examined separate and apart from their said husbands, and the contents of said instrument being made known to them, confessed that they did severally execute said deed freely and without any fear or compulsion of their said husbands.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me, personally appeared James Boorman, esq'r, executor, &c., known to me to be the same person described in and who executed the above instrument of writing, who duly acknowledged that he executed the same. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City and County of N. Y.

Recorded the preceding at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 minutes past 11 a. m.

MORRIS FRANKLIN,
Deputy Register.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the fourteenth day of April, 1830, at 11 o'clock, 45 minutes a. m., in liber of conveyances 260, page 398, and certify the same to be a correct transcript therefrom and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 30th day of July, 1862.

JOHN KEYSER, *Register.*

(Indorsed:) James Boorman, &c., executors, and James C. R. Smith, &c., to Jeanet Clarke. Dated November 15th, 1829. Deed. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 8. Knox & Mason, sol'rs for def'ts. Hall, Clayton & Medole, printers, 46 Pine st., N. Y. Filed Sept. 12, 1871.

426 This indenture, tripartite, made the fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, between James Boorman and Matthew St. Clair Clarke, executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; James C. R. Smith and Julia M., his wife, of Newark, New Jersey; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew St. Clair Clarke, her attorney; Mathew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City; Joseph Duncan and Elizabeth C. Duncan, his wife, of Illinois, parties of the second part; and Robert Dyson, of the city of New York, of the third part, witnesseth that, for and in consideration of the sum of three thousand six hundred and sixty-three dollars and five cents, lawful money, in hand paid by the party of the third part to the said parties of the first part, before the ensealing and delivery of these presents, the said parties of the first part, in pursuance of and by virtue of the power contained in said last will and testament, have granted, bargained and sold, remised, released, enfeoffed and confirmed, and by these presents do grant, bargain and sell, remise, release, enfeoff, and confirm, to
427 the said party of the third part, his heirs and assigns, all and singular, the hereinafter described property, situate and being in the city of New York, to wit: One lot of ground, known on the plan of said city as lot No. 202 on Elizabeth street, being the lot next to the corner lot of Grand street, containing about twenty-four feet front and rear, and running back in depth from ninety to one hundred feet, having thereon a small frame-house and wagon-makers' shop; also, one other lot, situate in said Elizabeth street, known, on the plan of the city, as lot No. 198, being the fifth lot from the said corner lot, of the same dimensions and extent as the first-named lot; also lots Nos. sixty-two (62) and ninety (90) in great lot lying between the Fifth and Sixth avenues, and embracing part of Seventeenth, Eighteenth, and Nineteenth streets, known as "the John Kerr lot," surveyed and laid off by George B. Smith, city-surveyor, on the nineteenth day of October, in the year of our Lord one thousand eight hundred and twenty-nine: To have and to hold the said several lots of ground, with their appurtenances, to him, the said party of the third part, his heirs and assigns forever, hereby vesting in him, the said third party, all the right and title which the said James R. Smith, de-
428 ceased, in his life-time had, in and to the premises aforesaid; and the said parties of the second part do hereby ratify and confirm said sale, and do remise, release, and forever quit-claim to all manner of right, title, interest and demand which any of them had in and to the said lots, with their appurtenances.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

J. BOORMAN. [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Executors of J. R. Smith.
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
JEANET CLARKE,
By her attorney, M. S. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of—
R. C. LUDLOW, as to the signature of J. C. R. Smith and Julia M. Smith, and J. Boorman.
W. CRANCH, as to all but J. C. R. Smith and wife, and James Boorman.

STATE OF NEW YORK,
City and County of New York, ss:

On the eighteen' day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me personally came and appeared J. C. R. Smith, esq'r, and Julia M., his wife, the
429 former known to me, and the latter proved to my satisfaction by the oath of Rob't Dyson, esq'r, of the city of New York, merchant, known to me, who, being duly sworn, deposeth and saith, that she is the person described in, and who executed the above deed, and they duly acknowledged that they executed the same; and the said Julia M. Smith, being examined by me privately and apart from her said husband, confessed that she executed the same freely and without any fear or compulsion of her said husband. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City and County N. Y.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court for said District, personally came Mathew St. Clair Clarke, executor of James R. Smith, and also as attorney in fact for Jeanet Clarke, and also as party grantor in his own right, and Joseph Duncan, to me personally known as party grantors in the aforegoing deed, and did severally acknowledge the said instrument to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Jos-
430 eph, who, being personally known to me as grantors within named, and being of full age, and by me examined separate and apart from their said husbands, and the contents of said deed being fully made known to them, did declare that they did sign, seal, and deliver said deed without any coertion or compulsion of their said husbands, or fear of their displeasure.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me, personally appeared James Boorman, esq., executor, &c., known to me to be the same person described in and who executed the above deed, who duly acknowledged that he executed the same. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds.

Recorded the preceeding, at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 minutes past 11, a. m.

MORRIS FRANKLIN,
Deputy Register.

431 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the fourteenth day of April, 1830, at 11 o'clock 45 minutes a. m., in liber of conveyances 260, page 400, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Daded this 30th day of July, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman, &c., executors, and James C. R. Smith, &c., to Robert Dyson. Dated November 15th, 1829. Debt to Hannah Rodgers' estate. Deed. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 9. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

432 This indenture, tripartite, made the fifteenth day of November, one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; James C. R. Smith and Julia, his wife, of Newark, New Jersey; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew St. Clair Clarke, her attorney; Mathew St. Clair Clarke and Anna R., his wife, of Washington City, of the second part; and Joseph Duncan and Elizabeth C. Duncan, his wife, of the third part, witnesseth that, whereas, on settlement of the accounts between the estate of Mrs. Hannah Rodgers, late Hannah Smith, deceased, mother of said Elizabeth, and the estate of the said James R. Smith, deceased, father of said Elizabeth, the said estate of James R. Smith is indebted to the estate of said Hannah Rodgers the sum of fourteen thousand six hundred and forty-two dollars and twenty-two cents, as of the first day this present month; and whereas, by the last will and testament of said Hannah, the said parties of the third part are entitled to one-fourth part of said sum, to wit, the sum of three thousand six hundred and sixty-three dollars and five cents; and whereas the said parties of the third part, as well as the parties of the second part, have agreed to take for said debts, from said parties of the first part, certain lots of ground in the city of New York, at a fair valuation; and whereas, by agreement in writing by all the heirs

This record is erroneous in regard to fractional lot number forty-six, in the 56th line of the record. In the original deed the number of the lot referred to is "forty," and, such error being discovered, the deed has, on that account, been recorded anew.

433 of said James R. Smith and said Hannah Rodgers, dated twenty-first day of October, one thousand eight hundred and twenty-nine, such valuation was made by James Boorman, Thomas Suffern, & Robert Dyson, esquires, of all the lots of ground belonging to the estate of James R. Smith; and whereas, from said valuation, the said parties of the third part have selected and set apart the hereinafter-described lots, in full payment as aforesaid; and whereas, by the last will and testament of James R. Smith, duly proven and recorded, the said parties of the first part are duly authorized to sell any part, or all, of the real estate of the said James R. Smith: Now, therefore, the said parties of the first part, for and in consideration of the premises aforesaid, as well as the sum of three thousand six hundred and sixty-three dollars and five cents, lawful money, received by them from the said parties of the third part, as a credit of the estate of James R. Smith, have granted, bargained, and sold, remised, released, conveyed, and confirmed, and do

hereby grant, bargain, and sell, remise, release, convey, and confirm unto the said Joseph Duncan and Elizabeth C. Duncan, parties of the third part, all and singular the lots of ground, with their appurtenances, hereinafter particularly described, to wit: Lot number 816 Eldridge street, on the east side of s'd Eldridge street, south of Rivington street, adjoining, on the north, No. 817, a lot of James C R. Smith, and, in the rear of No. 827, a lot of Mathew S. Clarke and wife, on Allen street, containing twenty-
434 five feet front and about ninety feet back, be the same more or less; also, lots numbered six hundred and fifty and six hundred and forty-nine, on Forsyth street, on the plan of the city of New York, and described in the valuation aforesaid as numbers three and four, adjoining lots of M. S. Clarke and wife, on the north and in the rear, being twenty-five feet front and one hundred feet deep, more or less; also, lots numbered forty-one and forty-two as laid down in the subdivision of the great lot containing five acres and upwards, between the Fifth and Sixth avenues, and being on the Seventeenth and Eighteenth and Nineteenth streets, being fractional lots; also, fractional lot number forty-six, adjoining the aforesaid lots on said great lot; also, lot number seventy-three, (73,) in said great lot, which subdivision is deposited with the articles of agreement aforesaid: To have and to hold the said several lots of ground, with their improvements and appurtenances, to them, the said parties of the third part, and to the heirs and assigns of her, the said Elizabeth C. Duncan, to their own use, benefit, and behoof forever, hereby vesting in them the said Joseph and Elizabeth, all the right, title, and interest which the said James R. Smith in his life-time had in and to the said lots of ground, with the appurtenances. And the said parties of the second part do hereby ratify and confirm said sale, and do remise, release, and forever quit claim unto the said parties of the third part, their heirs and assigns, all the right, title, interest,
435 claim, and demand whatsoever of, in, and to, all and every part of the premises hereby granted and sold.

In witness whereof the parties to those presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR CLARKE, [L. S.]
J. BOORMAN, [L. S.]
Executors of J. R. Smith.
J. C. R SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
JEANET CLARKE,
By her attorney, M. S. CLARKE. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]

Sealed and delivered in the presence of (the word "November," on the first line, and the words "of No. 827," 34th line; the words "fifth" and "sixth," 41st line, and the words "of New York," on the 37th line; and also, "lot number seventy-three, (73,) in said great lot 43," 1st page, being first interlined)—

R. C. LUDLOW, as to the signatures of J. C. R. Smith, and Julia M. Smith, and James Boorman.

STATE OF NEW YORK,
City and County of New York, ss:

On the eighteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me, personally came

and appeared James C. R. Smith, esq., and Julia M. Smith, his wife, the former known to me and the latter proved to my satisfaction to be the person described in and who executed the above instrument of writing, by the oath of Robert Dyson, esq., of the city of New York, mer-
436 chant, who, being duly sworn, deposeth and saith that she is the person mentioned and described in said instrument of writing, and they duly acknowledged that they executed the same; and the said Julia M. Smith, being examined by me privately and apart from her said husband, confessed that she executed the same freely and without any fear or compulsion of her said husband. All material interlineations being noted I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City & County N. Y.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on the 26th day of December, anno Domini one thousand eight hundred and twenty-nine, before me, William Cranch, chief justice of the circuit court of the United States for said District, personally came Mathew St. Clair Clarke, executor of James R. Smith, and as attorney in fact for Jeanet Clarke, and also as grantor in his own right, and Joseph Duncan, to me known as the grantors in the aforegoing deed, and did severally acknowledge the aforegoing instrument of writing to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known as grantors within-named, who, being severally of full age, and by me examined separate and apart from their said husbands, and the contents of the aforegoing deed having been made known to them, confessed that they severally executed the
437 aforegoing deed freely and without any fear or *or* compulsion of their husbands.

W. CRANCH.

STATE OF NEW YORK,
City & County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me, personally appeared James Boorman, esq'r., executor, &c., known to me to be the same person described in and who executed the above instrument of writing, who duly acknowledged that he executed the same. All material interlineations being noted, I allow it to be recorded.

ROBERT C LUDLOW,
Commissioner of Deeds, City and County of N. Y.

Recorded the preceding, at the request of P. W. Radcliffe, the 14th day of April, 1830, at 45 min. past 11 a. m.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the fourteenth day of April, 1830, at 11 o'clock and 45 min. a. m., in liber of conveyances 260, page 395, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 30th day of July, 1862.

JOHN KEYSER, *Register.*

438 (Endorsed:) James Boorman, &c., executors, and James C. R. Smith, &c., to Joseph Duncan. Dated November 15th, 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 10. Knox & Mason, sol'rs for def'ts.

439 This indenture, tripartite, made this fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, surviving executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; Mathew St. Clair Clarke and Anna R. Clarke, his wife, of Washington City; James C. R. Smith and Julia M., his wife, of Newark, New Jersey; Joseph Duncan and Elizabeth C., his wife, of the second part; and Jeanet Clarke, widow, of Green Castle, Pennsylvania, of the third part, all of said second and third parties being heirs and devisees of James R. Smith aforesaid, witnesseth: Whereas said testator, James R. Smith, in his last will and testament, did authorize his executors, or the survivors of them, in their discretion, to sell, in fee-simple or otherwise, according to the nature of his estate at the time of his decease, at public auction or at private sale, the whole or any part of his real or personal estate; and in a codicil thereto annexed, did ratify and confirm the said will, and, after divers bequests and devises, all the residue of his estate, of whatever kind or nature, he gave, devised, and bequeathed unto his said executors in trust, that the same should be equally divided to and amongst his

440 four children, share and share alike, and to their respective heirs; and whereas the said testator did direct and declare that his daughters, Jeanet, Anna, and Elizabeth, if she should attain the age of twenty-one years, (and which she has now attained,) should have the privilege of expending and appropriating, with the consent of the executor, one-third part of their respective portions, as they may think proper, and over which, when so appropriated, they are to have absolute control; and whereas the debts of the estate are all paid, and the residue of said estate consists principally in real estate; and whereas the said daughters of the said testator are now desirous to appropriate their respective one-third parts of the said estate, and the executors aforesaid are willing that they shall do so; and whereas it is universally admitted by all the said heirs and devise's that a sale of said estate, to convert it into money, would be very injurious to all concerned; and whereas, by agreement among said heirs, the whole of the said real estate has been parted, divided, and valued in four distinct and equal parts; and whereas that part of the real estate lying out of the city of New York, and parted and divided as one-third of the one-fourth part devised and belonging to the said party hereto of the third part, in her own

441 right, is estimated at *at* six thousand nine hundred and twenty-nine dollars and fifteen cents, and that part of it lying in the city of New York, divided as the one-third of the one-fourth part thereof to said party of the third part, in her own right, is estimated at three thousand eight hundred and fifty-seven dollars thirty-one cents, after deducting the moneys coming to said third party, on account of the estate of Mrs. Hannah Rodgers, late Hannah Smith, deceased; and whereas it has been agreed by and between the said parties of the second and third parts, respectively, that the said parties of the first part should grant and convey to the said party of the third part, in manner hereinafter mentioned and contained, all and singular the lands and premises hereinafter mentioned and described, as and for and in full satisfaction of the said one-third part of the portion of her, the said Jeanet Clarke, so authorized to be appropriated, and over which, when so appropriated, she was to have

absolute control as aforesaid, and the said parties of the first part have accordingly consented and agreed to make such grant and conveyance thereof: Now, therefore, the said parties of the first part, for the good considerations herein named, and in pursuance of the agreement
442 above mentioned, and also in *the* consideration of the sum of six thousand nine hundred and twenty-nine dollars and fifteen cents, the valuation as aforesaid of the said share or portion of the real estate out of the city of New York, as parted and divided to the said third party, and which said sum she, the said third party, hereby acknowledges to have received from the said first party, as and for the said portion of said real estate last aforesaid, and hereby acquits and discharges said parties of the first and second parts, their heirs, executors, and administrators, forever from any claim or demand whatsoever to or for any other part or portion of said real estate out of the city of New York; and in consideration of the sum of three thousand eight hundred and fifty-seven dollars thirty-one cents as aforesaid, the valuation as aforesaid of the said share or portion of the said real estate in the city of New York, deducting as aforesaid the moneys due to her as an heir of Mrs. Hannah Rodgers, as parted and divided to said third party, and which said sum she, the said third party, likewise acknowledges to have received from the said first party, as and for the said portion of the said real estate lying in the city of New York, and does hereby acquit and discharge the said first and second parties in like manner as mentioned with regard to the real estate out of the city of New York; and for the
443 further sum of five dollars to the said first party in hand paid by the said third party, they the said first named party, have granted, bargained and sold, released, conveyed and confirmed, and do hereby grant, bargain and sell, release, convey and confirm unto the said party of the third part, all and singular the following-described lots, tracts, and parcels of ground out of the city of New York, to wit: In great lot number one hundred thirty-seven, the east part of subdivision No. 1, containing twenty-one acres, three roods, and thirty perches; and the west part of No. 2, containing seventy-eight acres and thirty perches, both contracted for *for* to William I. Courtwright. In great lots numbers one hundred and nine, one hundred and ten, one hundred and thirteen, subdivision No. 8, containing ninety-eight acres, contracted for to Benjamin F. Bird. In township number seven, in Franklin County, fifty acres in subdivision of lot No. 45, contracted for to Harley Ingersoll. In township, number seven, Franklin County, one hundred and twenty acres in subdivision No. 47, contracted for to Sally, John, and Solon Nichols. In the northeast section of township number one, in Watkins and Flint's purchase, Tioga County, subdivision No. 27, containing ninety-nine acres and nine hundredths of an acre, and the west half of No. 28, containing forty-seven acres and thirty-nine hundredths of an acre, both contracted for to William Fisk. In great
444 *great* lot number seventy-six, Fabius, in the county of Courtland, subdivision No. 3, containing sixty-one acres, contracted for to John Moss. In great lot last above named, subdivision No. 4, containing sixty-one acres and twenty-five hundredths of an acre, contracted for to Ephraim Griswold. In same lot, subdivision No. 9, containing one hundred and seven acres and five-eighths of an acre, contracted for to S. Brown and E. Primes; subdivision No. 3, in lot number two, Camillus, in the county of Onondaga, containing one hundred and thirteen acres and fifty hundredths of an acre, contracted for to Elijah Weston; and fifty acres in lot No. 47, in township number seven, Franklin County, contracted for to Rufus Morse. In the northeast sec-

tion, township number one, Watkins and Flint's purchase, the follow-
subdivisions: No. 10, containing ninety-one acres and fifty-three hun-
dredths of an acre; No. 47, containing one hundred and sixteen acres
and seventy-eight hundredths of an acre; No. 41, containing one hun-
dred and one acres and twenty-three hundredths of an acre; No. 34, con-
taining one hundred and six acres and ten hundredths of an acre; No.
20, containing one hundred and one acres and eighty-four hundredths of
an acre. In great lot number one hundred and seventy-three,
445 Tioga County, subdivision No. 4, containing one hundred and
thirty-one acres. In the third section of township number
twelve, Watkins and Flint's purchase, in Tioga County, near Owego, lot
number thirteen, the west half thereof, containing one hundred and two
acres, three roods, and twenty and a half perches. In great lot num-
ber one hundred and forty-nine, Erin, Tioga County, subdivision No. 3,
containing one hundred and one acres, two roods, and sixteen perches.
In township number seven, Franklin County, in lot number fifty-eight,
that tract called the Munson lot, containing one hundred acres. In
township number six, Clinton County, the northeast quarter lot num-
ber twenty-seven, containing one hundred and eighty-four acres three
roods and twenty-seven and a half perches. In the Hardenburgh
patent, fifth allottment, subdivision No. 3, in great lot number six,
Ulster County, lot number two hundred and sixty six, containing one
hundred and thirty-five acres and one rood. In the southwest section,
township number six, Watkins and Flint's purchase, Tioga County, lot
number thirty-seven, containing one hundred and eighty acres. In
great lot number one hundred and thirty-seven, Chemung, Tioga County,
subdivision No. 12, known as the Jeremiah L. Holland tract, containing
one hundred and seventeen acres, two roods, and sixteen perches.
446 In great lots numbers one hundred and nine, one hundred
and ten, and one hundred and thirteen, Old Chemung, Tioga
County, subdivision No. 11, containing one hundred acres; and
subdivision No. 3, in great lot number fifteen, Randolph Township,
Broome County, containing eighty acres; all of said lots being taken by
their description, be their contents more or less. And in the city of
New York, all and singular the following-described lots and parcels of
ground, situate and discribed as follows, to wit: One lot on Elizabeth
street, being the fourth from the corner lot on Grand street, adjoining
a lot of James C. R. Smith on the north, and Mathew St. Clair Clarke
and wife on the south, known on the plan of the city as lot No. 199,
and being about twenty-four feet front, and about ninety-five feet deep,
having thereon a two-story house; also one lot on Allen street, known
as lot No. 826, in the plan of the city, adjoining a lot of Mathew St.
Clair Clarke and wife on the south, and between Rivington and Delan-
cey streets, being twenty-five feet front, and one-half the distance
through the square towards Eldridge street. Also, on the great lot
called the John Kerr lot, lying between the Fifth and Sixth avenues,
and embracing part of Seventeenth, Eighteenth, and Nineteenth streets.
The subdivisions following—lots numbered 25, 56, 57, 4, and 18,
447 and fractional lots Nos. 2 and 3—the said lots being taken by
their designation, be their contents more or less. And they, the
said parties of the second part, do hereby ratify, consent to and confirm
the said sale, and remise, release, and and forever quit-claim unto the
said party of the third part, her heirs and assigns, all the right, title,
interest, claim, and demand whatsoever, of, in, and to all and singular
the said premises, with the hereditaments and appurtenances: To have
and to hold the said hereby granted and described premises, and every

part and parcel thereof, with the appurtenances, unto the said party of the third part, her heirs and assigns, to her and their own use, benefit, and behoof forever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above writen.

J. BOORMAN, [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Executors of James R. Smith.
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of—
R. C. LUDLOW, as to the signatures of J. C. R. Smith and Julia M. Smith, and James Boorman.
W. CRANCH, as to all but J. C. R. Smith and wife, and James Boorman.

448 STATE OF NEW YORK,
City and County of New York ss:

On the eighteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me personally came and appeared J. C. R. Smith, esq., and Julia M., his wife, the former known to me, and the latter proven to my satisfaction to be the person described in and who executed the above instrument of writing, by the oath of Robert Dyson, esq., of the city of New York, merchant, who, being duly sworn, deposeth and saith, that she is the person mentioned in said instrument of writing, and they duly acknowledged that they executed the same; and the said Julia M. Smith, being examined by me privately and apart from her said husband, confessed that she executed the same freely, and without any fear or compulsion of her said husband. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City and County of New York.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this 26th day of December, anno Domini, one thousand eight hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court of the United States for said Dis-
449 trict, personally came Mathew St. Clair Clarke, executor of James R. Smith, and also in his own right, and Joseph Duncan, to me personally known as party grantors in the aforegoing instrument of writing, and did severally acknowledged the foregoing instrument to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known as grantors in the aforesaid deed, who, being of full age, and by me examined seperate and apart from their said husbands, and the contents of said instrument being made known to them, confessed that they did severally execute said deed freely, and without any fear or compulsion of their said husbands.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me, personally came and appeared James Boorman, esq., &c., known to me to be the same person described in, and who executed the above instrument of writing, who duly acknowledged that he executed the same. I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City and County N. Y.

Recorded the preceeding, at the request of P. W. Radcliff, the 14th day of April, 1830, at 45 minutes past 11, a. m.

MORRIS FRANKLIN,
Deputy Register.

450 OFFICE OF THE REGISTER OF DEEDS &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the fourteenth day of April, 1830, at 11 o'clock 45 minutes a. m., in liber of conveyances 260, page 409, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify, that there is no official seal belonging to this office.

Dated this 30th day of July, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman, &c., executors, to Jeanet Clarke, dated November 15th, 1829. $\frac{1}{3}$ of $\frac{1}{4}$. Deed. U. S. circuit court. Clark vs. Executors of Boorman. Exhibit No. 11. Knox & Mason, sol'rs for def's. Filed September 12, 1871.

451 This indenture, tripartite, made this fifteenth day of November, anno Domini one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, surviving executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew St. Clair Clarke, her attorney in fact, Mathew St. Clair Clarke, Anna R. Clarke, his wife, and Joseph Duncan and Elizabeth C., his wife, legatees and devisees, under the said will of said James R. Smith, deceased, of the second part; and James C. R. Smith, of Newark, Jersey, also a devisee and legatee of said James R. Smith, deceased, of the third part, witnesseth, that whereas said testator, James R. Smith, in his said last will and testament did authorize his executors, or the survivors of them in their discretion to sell, in fee-simple or otherwise, according to the nature of his estate at the time of his decease, at public auction or at private sale, the whole or any part of his real or personal estate, and in a codicil thereto annexed, did ratify and confirm his said will; and after divers devises and bequests, all the residue of his estate,

of whatsoever kind or nature, he gave, devised, and bequeathed
452 unto his said executors, in trust, that the same should be equally divided to and amongst his four children, share and share alike, and to their respective *liens;* and whereas the said testator directed that his son, James, should not come to the full possession and enjoyment of his portion of the estate until the age of twenty-five years, nor have power to pawn, pledge, mortgage, or dispose of the same untill that age; and whereas the said parties of the second part, are now all of lawful age, and the said party of the third part is over the age of

twenty-five years, and is entitled to demand from said executors his one-fourth part of said estate; and whereas the residue of said estate, after having paid the debts by sale of part, is principally in real estate, and the said second and third parties are desirous to avoid the sacrifice that would follow the sale of said estate by the executors, and the said second and third parties hereto, by universal consent, have parted and divided and valued said estate in four equal parts in kind, as by reference to articles of agreement, dated first of October, one thousand eight hundred and twenty-nine, will appear; and whereas, the said second party hereto do consent and agree to join the first party
453 in conveying and confirming to said third party all the hereinafter-described real estate so parted, divided, and valued to him as so much money; and whereas the said third party agrees to accept and receive the same as his one-fourth part of said estate; and whereas the said one-fourth part amounts for that part of the real estate which lies out of the city of New York, to twenty thousand five hundred and ninety-two dollars and twenty-four cents; and for that part lying in said city, to nine thousand three hundred and sixty dollars, the third party having received out of the estate heretofore more than the other heirs: Now, therefore, the said first party, for these good considerations, and in pursuance of the agreement above-mentioned, and in consideration of the sum of twenty thousand five hundred and ninety-two dollars and twenty-four cents, the valuation as aforesaid of real estate out of the city of New York, as parted and divided to said third party, and which said sum he, the said third party, hereby acknowledges to have received from the said first party, as and for his portion of the said real estate last aforesaid, and hereby acquits and discharges said parties of the first and second parts, their heirs, executors, and administra-
454 tors forever, from any claim or demand whatsoever, to or for any other part or portion of said real estate out of the city of New York; and in consideration of the sum of nine thousand three hundred and sixty dollars, the valuation as aforesaid of the said real estate in the city of New York, as parted and divided to said third party, and which said sum he, the said third party, likewise acknowledges to have received from said first party, as and for his portion of said real estate lying in the city of New York, and hereby acquits and discharges the said first and second parties in like manner as mentioned, with regard to the real estate out of said city; and for the further consideration of five dollars to the said first party in hand paid by the said third party, they, the said first party named, have granted, bargained, and sold, released, conveyed, and confirmed, and, by these presents, do grant, bargain, and sell, release, convey, and confirm unto the said party of the third part, his heirs and assigns, all and singular, the following-described lots, tracts, and parcels of ground out of the city of New York, to wit: In great lot number one hundred and thirty-seven, Chemung Township, Tioga County, State of New York, subdivision number two, east part, and number three, containing one hundred and fifty-six acres thirty perches, being that tract of land now
455 contracted for by William Evert; subdivision number four, east half, now contracted for by Phineas Rodgers; subdivision number five, containing seventy-seven acres, two roods, twenty-one perches; subdivision number thirteen, containing one hundred and seventeen acres, two roods, sixteen perches. In the Hardenburg patent, fifth allotment, subdivision number three, great lot number six, Ulster County, subdivision two hundred and fifty-one, containing one hundred and thirty-one acres, three roods; subdivision number two hundred and six-

ty-two, containing one hundred and thirty acres, three roods; and subdivision number two hundred and seventy-three, containing one hundred and thirty-four acres, one rood. In great lot number one hundred and forty-nine, in Erin Township, in the county of Tioga, the following subdivisions, to wit: Number four, containing one hundred and twelve acres, one rood, twenty-nine perches; number thirteen, west part, containing fifty-three acres, one rood, eight perches. In great lots numbers one hundred and nine, one hundred and ten, one hundred and thirteen, in the old town of Chemung, the following subdivisions, to wit: Number one, containing eighty-six acres and ten perches; lot number five, containing eighty-two acres, two roods; lot number fourteen, containing one hundred acres; lot number fifteen, containing fifty-six acres;
456 lot number sixteen, containing sixty acres, one rood. In Randolph Township, Broome County, the following *the* lots, to wit: In great lot number fifteen, subdivision number five, containing eighty acres; great lot number seventeen, subdivisions numbers one, two, and eight, each containing eighty acres; great lot number twenty-two, subdivision number four, containing eighty acres; great lot number twenty-seven, subdivisions number four, containing eighty acres; and number eight, containing eighty acres, including the waters of the lake. In township number seven, Franklin County, in great lot number twelve, subdivision number four, containing eighty-two acres, one rood, as in the general division, but really containing, as per map in book of Isaac Sebring's agency, one hundred and eleven acres, six perches. In great lot number forty-five, a subdivision of sixty-nine acres, one rood, contracted for by Joel Griffin, and a subdivision of the remaining one hundred and sixty-seven acres, two roods, nineteen perches, denominated the northeast quarter, containing forty-one acres, three roods, twenty-four perches. In great lot number fifty, subdivision of fifty acres, contracted for by Winthrop Foye, forty-seven acres, called the Otis tract, and a lot called the southeast section or number four
457 on Sebring's map, containing eighty-two acres and one rood. In great lot number fifty-nine, subdivision number two, (being north half of the Chamberlain lot,) one hundred *one hundred* and forty acres. In great lot number seventy-five, the southwest one fourth part, containing one hundred and ninety-five acres, one rood, and two perches. In great lot number ninety, subdivision number four, containing one hundred acres; and number six, containing one hundred and three acres and one rood. In great lot number six, in Clinton County, southeast quarter, containing one hundred and fifty-seven acres, two roods, seventeen perches. In great lot number twenty-seven, as above, the south quarter, containing one hundred and eighty-four acres, three roods, twenty-seven perches, and a half perch. In great lot number fifty-seven, as above, the southwest quarter, containing one hundred and seventy-nine acres, three roods, and sixteen perches. In great lot number sixty-six, as above, the southeast quarter, containing two hundred and twelve acres, two roods, and twenty-eight perches. In great lot number sixty-nine, as above, the southeast quarter, containing one hundred and fifty-nine acres, one rood, three perches. In great lot number eighty-four, as above, the southwest quarter, containing one hundred and sixty-eight acres, seventeen and a half perches. In great lot number thirteen, in township number four, Clinton County, the
458 northeast quarter, containing one hundred and sixty acres. In great lot number seventy-six, Old Fabius, in the county of Courtland, subdivisions numbers five and six, contracted for by George Hayes, containing together one hundred and ten acres eighty-three-hun-

dredths. In great lot number two, Camillus, in the county of Onondaga, subdivision number six, contracted for by Hugh McMullen, containing fifty acres; and subdivision number eleven, containing fifty acres twenty nine-hundre'ths. In township number twelve, Watkins & Flint's purchase, Tioga County, near Owego, east half of number twelve, containing one hundred and two acres, three roods, and twelve perches; and lot number sixteen containing one hundred and sixty-three acres, three roods, twenty-four perches. In the northwest section of township number nine, in Watkins and Flint's purchase, in Tioga County, subdivision number one, containing two hundred and two acres; and number two, containing one hundred and one acres, contracted for by Joseph and James Y. Hinds. In township number six, Tioga County, Watkins and Flint's purchase, north part, southwest section, lot number thirty five, containing two hundred and two acres. In great lot number seventeen, Fayette, (now Easton,) subdivision of northwest quarter, containing one hundred and sixty acres. In great
459 lot number one hundred and seventy-three, Old Chemung, Tioga County, subdivision number two, containing one hundred and thirty-four acres; subdivision number five, containing one hundred and twenty-six acres; subdivision number nineteen, containing ninety-three acres; subdivision number seven, containing one hundred and fifteen acres; subdivision number twenty, containing one hundred and two acres. In northeast section, township number one, Watkins and Flint's purchase, Tioga County, lot number one, containing two hundred and sixteen acres and thirty-two hundredths; number four, containing ninety-six acres; number fourteen, containing one hundred and three acres, sixty-four hundredths; number seventeen, containing one hundred and two acres, eighty-seven hundredths; number twenty-one, containing one hundred and two acres, seventy-seven hundredths; number twenty-three, containing ninety-eight acres, seventy-three hundredths; number twenty-four, containing ninety-seven acres, eighty-five hundredths; number twenty-five, containing ninety-five acres, seventy-two hundredths; number thirty, containing ninety-seven acres, sixty-three hundredths; number thirty-seven, north half, containing forty-eight acres, six hundredths; number thirty-nine, containing one hundred and six acres, fifty-
460 seven hundredths; number forty-five, containing ninety-three acres, fifty-eight hundredths; number fifty-two, containing one hundred and ten acres, seventy hundredths; number fifty-three, containing one hundred and eleven acres, seven hundredths. All of which several lots of land are to be holden as surveyed or divided, be the same more or less. And all and singular the lots of ground, with their improvements and appurtenances, hereinafter described, lying within the limits of the city of New York: Lot number eight hundred and seventeen, on the plan of the city, fronting on Eldridge street, between Rivington and Delaney streets, bounded on the south by a lot of Joseph Duncan and wife, and on the east by M. S. Clarke, being twenty-five feet in front and about ninety feet back, being half of the distance to Allen; lot number two hundred, on the plan of the city, fronting on Elizabeth street about twenty-five feet, and running back about ninety feet, be the same more or less, adjoining Joseph Duncan on the north, and Jeanet Clarke on the south, being thereon erected a frame house. In the great lot lying between Fifth and Sixth avenues, and embracing part of the Seventeenth, Eighteenth and Nineteenth streets, designated as the John Kerr lots, numbers eight, nine, ten, twenty-two,
461 twenty-three, twenty-four, thirty-three, thirty-seven, thirty-nine, fifty-four, fifty-five, fifty-eight, fifty-nine, sixty-eight, sixty-nine,

seventy-two, seventy-eight, seventy-nine, eighty-three, eighty-four, ninety-three, ninety-four, ninety-seven, ninety-eight. In the great lots numbers twenty-eight and thirty, designated as the Stewart lots, and situated between Twenty-six and Twenty-seventh streets, and subdivided into eight lots—lots numbers four and five, being each about twenty-four feet ten inches in front, and about two hundred and forty feet deep—the said lots being taken by their designation, be their contents more or less: and they, the said parties of the second part, do hereby ratify, consent to, and confirm the said sale, and remise, release, and quit-claim unto him, the said party of the third part, his heirs and assigns, forever, all the right, title, interest, claim and demand whatsoever of them, the said parties of the second part, and each of them, of, in, and to all and singular the said premises, with the hereditaments and appurtenances: To have and to hold the said hereby granted and described premises, and every part and parcel thereof, with the appurtenances, unto the said party of the third part, his heirs and assigns, to his only proper use, benefit, and behoof, forever.

In witness whereof the parties to these presents have here-
462 unto interchangeably set their hands and seals the day and year first above written.

J. BOORMAN, [L. S.]
M'W ST. CLAIR CLARKE, [L. S.]
Ex'rs of J. R. Smith.
JEANET CLARKE,
By her attorney, M. S. CLARKE. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of (the word "November," and the words "and the said second and third parties are desirous to avoid the sacrifice which would follow the sale of said estate by the executors;" on the 1st page, the words "eight," "purchase," and "south;" on the second page, the words, "Watkins and Flint's purchase, Tioga County, near Owego, east half of number twelve;" 13th line, 3d page, the word "then;" on the 15th line, the words, "one," "one;" 17th line, 3d page, the words "part," and "part;" on the 5th and 6th lines, 4th page, being first interlined)—

W. CRANCH, as to all but J. C. R. Smith and wife, and James Boorman.

R. C. LUDLOW, as to James Boorman.

WASHINGTON COUNTY,
District of Columbia ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini, one thousand eight hundred and twenty-nine, personally came before me, William Cranch, chief judge of the circuit court of the
463 United States for said District, Mathew St. Clair Clarke, executor as aforesaid, and as attorney in fact for Jeanet Clarke, and also grantor in his own right, and Joseph Duncan, grantors aforesaid, to me personally known as such, and did severally acknowledge the aforegoing instrument of writing to be their act and deed; and at the same time came also Anna R. Clarke, wife of said Mathew and Elizabeth C. Duncan, wife of said Joseph, to me personally known as party grantors in the aforegoing deed, who, being of full age, and by me examined sepe-

rate and apart from their said husbands, and the contents of the foregoing instrument being made known to them, did declare that they freely and voluntarily did sign, seal, and deliver said instrument as their act and deed, without any coertion or compulsion of their said husbands, or fear of their displeasure.

W. CRANCH.

STATE OF NEW YORK,
City and County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me, personally came and appeared James Boorman, esq., executor, &c., known to me to be the same person described in and who executed the above instrument of writing,
464 who duly acknowledged that he executed the same. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City and County N. Y.

Recorded the preceeding at the request of P. W. Radcliff this 20th May, 1830, at 39 min. past 3 p. m.

OFFICE OF REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 20th day of May, A. D. 1830, at 3 o'clock and 39 min. p. m., in liber No. 263 of conveyances, page 184, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office. Dated this 14th day of October, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman & others to Ja's C. R. Smith. Dated November 15th, 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 12. Knox & Mason, sol'rs for def't. Deed. Filed Sept. 12, 1871.

465 This indenture, tripartite, made this fifteenth day of November, one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; James C. R. Smith and Julia, his wife, of Newark, New Jersey; Jeanet Clarke, widow, of Green Castle, Pennsylvania, by Mathew St. Clair Clarke, her attorney; Mathew St. Clair Clarke and Anna R., his wife, of Washington City, of the second part; and Joseph Duncan and Elizabeth C. Duncan, his wife, of the third part, witnesseth, that whereas, on settlement of the accounts between the estate of Mrs. Hannah Rodgers, late Hannah Smith, deceased, mother of said Elizabeth, and the estate of the said James R. Smith, deceased, father of said Elizabeth, the said estate of James R. Smith is indebted to the estate of said Hannah Rodgers the sum of fourteen thousand six hundred and forty-two dollars and twenty-two cents as of the first day of this present month; and whereas, by the last will and testament of said Hannah, the said parties of the third part are entitled to one-fourth part of said sum, to wit, the sum of three thousand six hundred and sixty-three dollars and five cents; and whereas the said parties of the third part as well as the parties of the second part have agreed
466 to take for said debts from said parties of the first part certain lots of ground in the city of New York, at a fair valuation; and whereas, by agreement in writing by all the heirs of said James R.

Smith and said Hannah Rodgers, dated twenty-first day of October, one thousand eight hundred and twenty-nine, such valuation was made by James Boorman, Thomas Suffern, and Robert Dyson, esquires, of all the lots of ground belonging to the estate of James R. Smith; and whereas, from said valuation, the said parties of the third part have selected and set apart the hereinafter-described lots in full payment as aforesaid; and whereas by the last will and testament of said James R. Smith, duly proven and recorded, the said parties of the first part are duly authorized to sell any part, or all of the real estate of said James R. Smith: Now, therefore, the said parties of the first part, for and in consideration of the premises aforesaid, as well as the sum of three thousand six hundred and sixty-three dollars and five cents, lawful money, received by them from the said parties of the third part, as a credit of the estate of James R. Smith, have granted, bargained, and sold, remised, released, conveyed, and confirmed,
457 and do hereby grant, bargain and sell, remise, release, convey, and confirm unto the said Joseph Duncan and Elizabeth C. Duncan, parties of the third part, all and singular the lots of ground with their appurtenances hereinafter particularly described, to wit: Lot number 816 Eldridge street, on the east side of s'd Eldridge street, south of Rivington street, adjoining on the north, No. 817, a lot of James C. R. Smith, and in the rear, No. 827, a lot of Mathew S. Clarke and wife, on Allen street, containing twenty-five feet front and about ninety feet back, be the same more or less; also, lots numbered six hundred and fifty and six hundred and forty-nine, on Forsyth street, on the plan of the city of New York, and described in the valuation aforesaid as numbers three and four, adjoining lots of M. S. Clarke and wife on the north and in the rear, being twenty-five feet front and one hundred feet deep, more or less; also, lots numbered forty-one and forty-two, as laid down in the subdivision of the great lot, containing five acres and upwards, between the Fifth and Sixth avenues, and being on the Seventeenth and Eighteenth and Nineteen streets, being fractional lots; also fractional lot number forty, adjoining the aforesaid lots on great lot; also num-
468 ber seventy-three (73) in said great lot, which subdivision is deposited with the articles of agreement aforesaid: To have and to hold the said several lots of ground, with their improvements and appurtenances, to them, the said parties of the third part, and to the heirs and assigns of her, the said Elizabeth C. Duncan, to their own use, benefit, and behoof forever, hereby vesting in them, the said Joseph and Elizabeth, all the right, title, and interest which the said James R. Smith in his lifetime had, in and to the said lots of ground, with the appurtenances; and the said parties of the second part do hereby ratify and confirm said sale, and do remise, release, and forever quit-claim unto the said parties of the third part, their heirs and assigns, all the right, title, interest, claim, and demand whatsoever of, in, and to all and every part of the premises hereby granted and sold.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

M'W ST. CLAIR CLARKE. [L. S.]
J. BOORMAN, [L. S.]
Executors of J. R. Smith.
J. C. R. SMITH. [L. S.]
JULIA. M. SMITH. [L. S.]
JEANET CLARKE,
By her attorney, M. S. CLARKE. [L. S.]
M'W ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]

Sealed and delivered in the presence of (the word "November," on the first line, and the words "of No. 827," 34th line; the words "fifth and sixth," 41st line, and the words "of New York," on the 37th line, and "also lot number seventy-three (73) in said great lot, 43," 1st page, being first interlined)—

R. C. LUDLOW, as to the signature of J. C. R. Smith and Julia M. Smith and James Boorman.

W. CRANCH, as to all but J. C. R. Smith and wife and James Boorman.

STATE OF NEW YORK,
City and County of New York, ss:

On the eighteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, before me, personally came and appeared James C. R. Smith, esq, and Julia M. Smith, his wife, the former known to me, and the latter proved to my satisfaction to be the person described in and who executed the above instrument of writing, by the oath of Robert Dyson, esq., of the city of New York, merchant, who, being duly sworn, deposeth and saith that she is the person mentioned and described in said instrument of writing, and they duly acknowledged that they executed the same; and the said Julia
470 M. Smith, being examined by me privately and apart from her said husband, confessed that she executed the same freely and without any fear or compulsion of her said husband. All material interlineations being noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner, City and County N. Y.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court of the United States for said District, personally came Mathew St. Clair Clarke, executor of James R Smith, and as attorney in fact for Jeanet Clarke, and also as grantor in his own right, and Joseph Duncan, to me known as the grantors in the aforegoing deed, and did severally acknowledge the aforegoing instrument of writing to be their act and deed; and at the same time came Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known as grantors within named, who, being severally of full age, and by me examined seperate and apart from their said husbands, and the contents of the
471 aforegoing deed having been made known to them, confessed that they severally executed the aforegoing deed freely and without any fear or compulsion of their said husbands.

W. CRANCH.

471 STATE OF NEW YORK,
City and County of New York, ss:

On the ninth day of March, in the year of our Lord one thousand eight hundred and thirty, before me personally appeared James Boorman, esq., executor, &c., known to me to be the same person described in, and who executed the above instrument of writing, who duly acknowledged that he executed the same. All material interlineations be noted, I allow it to be recorded.

ROBERT C. LUDLOW,
Commissioner of Deeds, City and County of N. Y.

Recorded the preceeding, at the request of G. W. Strong, this 10th December, 1833, at 45 minutes past 12 m.

GILBERT CONTANT, *Register.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded
472 in this office on the tenth day of December, 1833, at 12 o'clock and 45 minutes p. m., in liber No. , of conveyances, page , and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 30th day of July, A. D. 1862.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman, &c., to Joseph Duncan and wife. 15th Nov., 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 13. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

473 This indenture, tripartite, made this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, between James Boorman and Mathew St. Clair Clarke, surviving executors of the last will and testament of James R. Smith, late of the city of New York, deceased, of the first part; James C. R. Smith and Julia M., his wife, of Newark, New Jersey; Jeanet Clarke, widow, of Green Castle, Pennsylvania; Mathew St. Clair Clarke and Anna R., his wife, of Washington City; Joseph Duncan and Elizabeth C., his wife, of Illinois, parties of the second part; and Robert Dyson, of the city of New York, of the third part, witnesseth that, for and in consideration of the sum of sixty-four thousand seven hundred and ten dollars and fifty-nine cents, lawful money, in hand paid by the party of the third part to Mathew St. Clair Clark, one of the parties of the first part, the receipt whereof the said Mathew doth hereby solely acknowledge before the ensealing and delivery of these presents, the said parties of the first part, in pursuance of and by virtue of the power contained in said last will and testament, have granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and by these presents do grant, bargain, and sell, remise, release, enfeoff, and confirm to the said third party, Robert Dyson, his heirs and assigns, all and singular the hereinafter-described lots and parcels of ground situate, lying, and being in the State of New York, and city of New York, more particularly-described as fol-
474 lows, to wit: In the northeast section of township No. one, Watkins and Flint's purchase, Tioga County; the following subdivisions as laid off and surveyed by Darius Bently, on the tenth day of January, 1821, to wit: Lot No. three, containing 68 acres $\frac{50}{100}$; No. seven, containing 99 acres $\frac{12}{100}$; No. eighteen, containing 100 acres $\frac{48}{100}$; No. twenty-seven, containing 99 acres $\frac{9}{100}$; and west half of No. twenty-eight, containing 47 acres $\frac{39}{100}$, sold together to William Fisk by articles of agreement; No. thirty-one, containing 99 acres $\frac{20}{100}$; No. forty-two, containing 102 acres $\frac{8}{100}$; No. forty-four, containing 94 acres $\frac{78}{100}$; No. fifty containing 119 acres $\frac{18}{100}$; and No. fifty-four, containing 117 acres $\frac{95}{100}$. In Randolph Township, Broome County, subdivision No. three; in great lot No. 15, subdivisions Nos. four and six; in great lot number seventeen, subdivisions Nos. three, seven, and eight; in great lot No. 22, subdivisions Nos. one and three; in great lot No. 27, all and every of said subdivisions, containing eighty acres. In great lot No. 17, Fayette,

(Easton,) now subdivision No. two, being the southwest one-fourth part contracted for to Richard Mudge and Jesse Skinner, containing 160 acres. In Tioga County, township No. six, of Watkins and Flint's purchase, north part of southwest section, subdivision No. thirty-two, containing 297 acres. and the northwest section of township No. nine, as above, subdivision No. two, south half thereof, containing 101 acres, and No. four, west half thereof, containing 191 acres. Also, in township No. six, Clinton County, subdivision No. one, being the northeast one-fourth part of great lot No. six, containing 156 acres, 2 roods, and 17 perches; subdivision No. three, being the
475 east one-fourth part of great lot No. fifty-seven, containing 179 acres, 3 roods, 16 perches; subdivision No. two, being the northwest on'-fourth part of great lot No. sixty-six, containing 212 acres, 2 roods, 28 perches; subdivision No. one, being the northeast one-fourth part of great lot No. sixty-nine, containing 159 acres, 1 rood, 3 perches; and subdivision No. two, being the northwest one-fourth part of great lot No. eighty-four, containing 168 acres, 17½ perches. In township No. four, Clinton County, subdivision No. two, being the northwest one-fourth part of great lot No. thirteen, containing 160 acres. In township No. seven, Franklin County, subdivision No. three, of remainder of great lot No. twelve, containing 82 acres, 1 rood; subdivision No. three, of remainder of great lot No. forty-five, being the southeast one-fourth part, containing 41 acres, 3 roods, 24 perches; a subdivision of great lot No. forty-seven, being fifty acres, contracted for to Rufus Morse; subdivision No. two, being the northeast, being the one-fourth part of the remainder of great lot No. fifty, containing 82 acres, 1 rood; subdivision No. one, being the south-half of the Chamberlain lot in great lot No. fifty-nine, containing 140 acres; subdivision No. three, being the southeast one-fourth part of great lot No. seventy-five, containing 195 acres 1 rood and 2 perches; and subdivision No. five of great lot No. ninety, containing 100 acres. In the township of Erin, Tioga County, in great lot No. one hundred and forty-nine, subdivision No. six, containing 101 acres and 1 perch; subdivision No. nineteen, containing 116 acres and 35 perches, contracted for to Martin and Stephen Deny.

In great lot No seventy-six, Fabius, (now Truxton,) Cortland
476 County, subdivision No. eight, contracted for to Job Whitemarsh, containing 56 acres. In Ulster County, Hardenburg patent, 5th allotment, subdivision No. three of great lot No. six, the subdivision No. two hundred and thirty-seven, containing 140 acres, 2 roods, and No. two hundred and sixty-seven, containing 136 acres. In the township of Chemung, Tioga County, great lot No. one hundred and thirty-seven, subdivision No. seven, containing 117 acres, 2 roods, 16 perches; and the west one-half of subdivision No. eight, contracted for to George Cooper, containing 58 acres, 3 roods, and 8 perches; also, subdivision No. fifteen, containing 62 acres, 3 roods, and 29 perches. In last aforesaid county, in great lot' Nos. 109, 110, and 113, as subdivided lot No. six, contracted for to James Boylan, containing 98 acres; and lot No. seventeen, contracted for to Brown, containing 109 acres, 1 rood, and 34 perches; and in great lot No. one hundred seventy-three, in said county, subdivision No. eleven, containing 102 acres; subdivision No. fifteen, containing 120 acres, and subdivision No. eighteen, containing 98 acres. In the city of New York, on Stanton street, lots Nos. one, four, and seven, as subdivided into nine equal lots, between Forsyth and Eldridge streets, and which lots are formed out of six lots known and designated on the plan of said city as lot No. 1479; the corner of Forsyth and Stanton, No. 1478, on Forsyth No. 1477, on same

No. 1455; the corner of Stanton and Eldridge, and No. 1456 and 1457 on Eldridge street. In the great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing a part of 17th, 18th,
477 and 19th streets, as subdivided lot No. seven, on 17th street; Nos. fifty, fifty-one, seventy, seventy one, on 18th street; Nos. eighty-one, eighty-two, ninety-five, ninety-six, one hundred and one, and one hundred and two, on 19th street; and fractional losts Nos. thirty-one and thirty-four, on 18th street; also, lots Nos. two and six in the subdivision of great lots Nos. twenty-eight and thirty two, called the Stewart lots, situate between the Seventh and Eighth avenues, on 26th and 27th streets, said great lots being subdivided into eight lots, each being about twenty-four feet ten inches in front and rear, and about two hundred and forty feet deep; also, the following lands in said State, to wit: In the county of Tioga, in the northeast section of township No. one, of Watkins & Flint's purchase, the following subdivisions, as surveyed and laid off by Darius Bentley, on the 10th day of January, 1821: subdivisions No. five, containing 92 acres $\frac{49}{100}$; No. nine, containing 94 acres $\frac{17}{100}$; No. eleven, containing 88 acres $\frac{34}{100}$; No. twelve, containing 92 acres $\frac{58}{100}$; No. thirteen, containing 96 acres $\frac{50}{100}$; No. nineteen, containing 107 acres $\frac{96}{100}$; No. thirty-six, containing 100 acres $\frac{78}{100}$; No. fifty-one, containing 113 acres $\frac{48}{100}$; No. fifty-five, containing 111 acres $\frac{40}{100}$; and No. fifty-six, containing 115 acres $\frac{67}{100}$. In Randolph Township, Broome County, in great lot No. twenty-seven, subdivisions Nos. two and five; in great lot No. seventeen, subdivision No. three; in great lot No. twenty-two, suddivisions Nos. one, five, and six; and in great lot No. fifteen, subdivision No. six, all whereof contain each 80 acres. In great lot No. seventeen, Fayette, (now Easton,) subdivision No. one, being the southeast one-fourth part, containing 160 acres. In Tioga
478 County, near Owego, in the third section of township No. twelve, Watkins and Flint's purchase, subdivisions No. fourteen, containing 105, acres 2 roods, and 24 perches; and fifteen, containing acres, 2 roods, and 14 perches. In Clinton County, township No. six, subdivision No. two, being the northwest one-fourth part of great lot No. six, containing 157 acres, 2 roods, 17 perches; subdivision No. one, being the northeast one-fourth part of great lot No. fifty-seven, containing 179 acres, 3 roods, and 16 perches; subdivision No. one, being the northeast one-fourth part of great lot No. sixty-six, containing 212 acres, 2 roods, and 28 perches; subdivision No. two, being the northwest one-fourth part of great lot No. sixty-nine, containing 159 acres, 1 rood, and 3 perches; subdivision No. three, being the southeast one-fourth part of great lot No. eighty-four, containing 168 acres and 17½ perches. In Clinton County, township No. four, subdivision No. three, being the southeast one-fourth part of great lot No. thirteen, containing 160 acres. In Franklin County, township No. seven, subdivision No. one, being the northeast one-fourth part of great lot No. seventy-five, containing 195 acres, 1 rood, and 2 perches; a lot, containing 50 acres, in the subdivision of great lot No. eighty, contracted for to William Brown; lot No. two, in the subdivision of great lot No. ninety, containing 100 acres; lot No. two, in subdivision of great lot No. twelve, containing 54 acres; subdivision No. four, being the southwest one-fourth part of the remainder of great lot No. forty-five, containing 41 acres, 3 roods, 24 perches; and a lot containing 50 acres in great lot No. fifty,
479 contracted for to John Newton. In Tioga County, (Chemung,) now Erin, in great lot No. one hundred and forty-nine, subdivision No. two, contracted for to John Joslyn, containing 101 acres and 1 perch; and subdivision No. fifteen, containing 99 acres, 3 roods, 30

perches. In Onondaga County, in No. two, Camillus, subdivision No. one, contracted for to P. Cornell, and now to Brewster, containing 49 acres, 3 roods. In the Hardenburg patent, Ulster County, fifth allotment, subdivision No. 3 of great lot No. 6, subdivisions No. two hundred and thirty-eight, containing 143 acres, two roods, and No. two hundred and seventy-four containing 135 acres, 2 roods. In Tioga County, (Chemung,) in great lot No. 137, subdivision No. 6, contracted for to Asabel Buck, containing 117 acres, 2 roods, 16 perches. In said county, in great lots Nos. 109, 110, and 113, as subdivided, a lot, being the east one-half of subdivision No. nine, contracted for to James Alison, or Elison, containing fifty acres; subdivision No. ten, contracted for to Jacob Woolever, containing one hundred acres; and subdivision No. eighteen, containing 96 acres, 2 roods, 16 perches; and in great lot No. 173, in said county, subdivision No. thirteen, containing 104 acres; No. 16, containing 101 acres; and No. seventeen, containing 107 acres. In the city of New York, on Stanton street, lots Nos. two, three, and five, as subdivided into nine equal lots between Forsyth and Eldridge streets, and which lots are formed out of six lots known and des-
480 ignated on the plan of said city, as lot No. 1479, the corner of Forsyth and Stanton; No. 1478, on Forsyth; No. 1477, on the same; No. 1455, the corner of Stanton and Eldridge; and Nos. 1456 and 1457, on Eldridge street. In the great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing a part of 17th, 18th, and 19th streets, as subdivided, lots No. six, on 17th street; Nos. seventeen, twenty, twenty-six, forty-eight, forty-nine, sixty-three, sixty-six, sixty-seven, on 18th street; Nos. eighty, eighty-five, eighty-six, eighty-nine, one hundred and three, one hundred and four, on 19th street. Fractional lots Nos. twenty-nine and thirty-two, on 18th street, and fractional lot No. twelve, not on any street; also lots Nos. one and seven, in the subdivision of great lots Nos. 28 and 32, called the Stewart lots, situate between the Seventh and Eighth avenues, on 26th and 27th streets, said great lots being subdivided into eight lots, each being about twenty-four feet ten inches in front and rear, and about two hundred and forty feet deep. Also, the following lands in the State aforesaid: In the county of Tioga, in the northeast section of township No. one, of Watkins & Flint's purchase, the following subdivisions as surveyed and laid off by Darius Bentley, on the 10th day of January, 1821: Subdivisions No. 6, containing 101 acres $\frac{69}{100}$; No. eight, containing 92 acres $\frac{5}{100}$; No. 15, containing 100 acres; No. twenty-two,
481 containing 100 acres $\frac{56}{100}$; No. twenty-six, containing 101 acres $\frac{65}{100}$; the east half of No. twenty-eight, containing 47 acres $\frac{39}{100}$; No. thirty-five, containing 100 acres $\frac{34}{100}$; the south half of No. thirty-seven, containing 48 acres $\frac{6}{100}$; No. thirty-eight, containing 100 acres; No. forty-three, containing 97 acres $\frac{30}{100}$. In Broome County, Randolph Township, in great lot No. fifteen, subdivision No. four, containing 80 acres. In great lot No. seventeen, subdivision No. five, containing 80 acres; and subdivision No. seven in said lot. In great lot No. twenty-two, subdivision No. two; in great lot No. twenty-seven, subdivisions Nos. seven and eight, all containing eighty acres each. In the north part of the southwest section of township No. six, of Watkins and Flint's purchase, subdivision No. thirty-six, containing 164 acres; and subdivision No. thirty-eight, containing two hundred and forty-seven acres. In the third section of township No. twelve, Watkins and Flint's purchase, near Owego, subdivision No. eleven, containing 199 acres and 24 perches. In township No. six, Clinton County, in great lot No. six, subdivision No. 4, containing 157 acres, 2 roods, 17

perches, being the southwest one-fourth part. In great lot No. 57, subdivision No. 10, containing 179 acres, 3 roods, 16 perches, being the northwest one-fourth part. In great lot No. 66, subdivision No. four, containing 212 acres, 2 roods, 28 perches, being the southwest one-fourth part. In great lot No. 69, subdivision No. four, containing 159 acres, 1 rood, 3 perches, being the southwest one-fourth part. In great lot No. 84, subdivision No. one, containing 168 acres, 17 perches, being the north-
482 east one-fourth part. In township No. four, Clinton County, subdivision No. four, in great lot No. 13, 160 acres, being the southwest one-fourth part. In township No. seven, Franklin County, subdivision No. one, of remainder of great lot No. 12, containing 82 acres, 1 rood. In great lot No. 33, 139 acres, contracted for to Elijah Alvord. In great lot No. 45, subdivision of remainder of two, containing 41 acres, 3 roods, 24 perches, being the northwest one-fourth. In great lot No. 47, fifty acres, contracted for to Simeon Pond, now given up. In great lot No. 75, subdivision No. two, containing 195 acres, 1 rood, and 2 perches, being the northwest one-fourth part; and in great lot No. 90, subdivision No. three, containing 100 acres. In Tioga County, township of Erin, in great lot Nos. 149, subdivision No. thirteen, containing 53 acres, 1 rood, 8 perches, being the east one half contracted for to Peter Blanvelt; and No. seventeen, containing 101 acres, 1 rood, 22 perches. In Courtland County, in great lot No. 76, Fabius, (now Truxton,) sub-division No. one, containing sixty-four acres $\frac{25}{100}$, contracted for to Louis Carpenter; and subdivision No. two, containing 63 acres $\frac{50}{100}$. In Onondaga County, in great lot No. 2, Camillus, the north half of subdivision No. ten, containing 25 acres, contracted for to Stephen W. Tappan. In Ulster County in the fifth allotment, subdivision No. three, great lot No. 6, Hardenburg patent, subdivision No. two hundred and seventy-two, containing 134 acres, 3 roods; and No. two hundred and seventy-five, containing 141 acres, 2 roods. In Tioga County, Chemung,
483 Township, in great lot No. 137, subdivision No. four—the west half thereof containing 51 acres and one-half, contracted for to Jonathan Robbins. In Tioga County, Chemung Township, in the subdivision of great lots Nos. 109, 110, and 113, subdivision No. three, containing 78 acres, 2 roods, 26 perches, contracted for to Willis W. Bennett; and No. thirteen, containing 100 acres. In the county of Tioga, in great lot No. 173, subdivision No. 3, (three,) containing 131 acres; subdivision No. six, containing 120 acres; subdivision No. ten, containing 103 acres; and subdivision No. fourteen, containing 117 acres. In the city of New York, lot No. 653 in the plan of said city, being lot No. 8, in the subdivision of said estate, lying on Eldridge street and next to the corner lot as laid off on Stanton street, bounded on the south by a lot of Jeanet Clarke; lots 6, 8, and 9, on Stanton street, as subdivided into nine equal lots between Forsyth and Eldridge streets, and which lots are formed out of six lots, known and designated on the plan of said city as lots Nos. 1479, corner of Forsyth and Stanton streets; No. 1478, on Forsyth street; No. 1479, on Forsyth street; No. 1455, corner of Stanton and Eldridge streets; and Nos. 1456 and 1457, on Eldridge street. In the great lot, called John Kerr lot, lying between the Fifth and Sixth avenues, and embracing a part of the 17th, 18th, and 19th streets, as subdivided lots Nos. twenty-seven, forty-seven, twenty-eight, thirty, thirty-five, fifty-two, fifty-three, sixty, sixty-one, and seventy-five, on 18th street; Nos. ninety-one,
484 ninety-two, and ninety-nine, on 19th street; and fractional lots Nos. thirteen, seventy-six, and seventy-seven, and lot No. one hundred, on 19th street; all of which said several tracts of land and lots of

ground to be holden by their several descriptions, be their contents more or less: To have and to hold the said several tracts of land and lots of ground, with the appurtenances and improvements thereon, to him, the said Robert Dyson, party of the third part, his heirs and assigns forever, hereby vesting in him, the said party of the thitd part, all the right and title which he, the said James R. Smith, deceased, in his life-time had in and to the premises aforesaid. And the said parties of the second part do hereby ratify and confirm said sale, and do remise, release, and forever quit-claim to all manner of right, title, interest, and demand which any of them had in and to the said several tracts of land and lots of ground, with the improvements and appurtenances.

In witness whereof the parties to these presents have hereunto set, interchangeably, their hands and seals the day and year first above written.

J. BOORMAN, [L. S.]
M'W. ST. CLAIR CLARKE, [L. S.]
Executors of James R. Smith.
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
JEANET CLARKE. [L. S.]
M'W. ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of—
485 W. CRANCH, as to all but J. C. R. Smith and wife and James Boorman.
ROBERT DYSON, 73 *Mercer Street.*
R. C. LUDLOW, for J. Boorman.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court of the United States in and for said District, personally came Mathew St. Clair Clarke, executor of James R. Smith, aforesaid, and also party-grantor in his own right, Jeanet Clarke, ud Joseph Duncan, grantors, to me personally known as such, and did severally acknowledge the aforegoing instrument to be their act and deed; and at the same time Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known, as grantors in said deed, who, being of full age, and by me examined, separate and apart from their said husbands, and the contents of said instrument being made known to them, confessed that they did severally execute said deed freely, and without any fear or compulsion of their said husbands.

W. CRANCH.

CITY AND STATE OF NEW YORK, *ss:*

On the twentieth day of May, 1830, personally appeared before
486 me James C. R. Smith, and Julia M., his wife, personally known to me to be the persons described in, and who acknowledged that they executed the within deed, for the uses and purposes therein mentioned; and the said Julia M., being examined by me, privately and apart from her said husband, acknowledged that she executed the same

freely, and without fear or compulsion of or from her said husband. All which I do certify. Let the same be recorded.

WILLIAM S. SEARS.
Commissioner of Deeds.

CITY AND COUNTY OF NEW YORK, *ss:*

On the ninth day of July, in the year of our Lord one thousand eight hundred and thirty, before me came James Boorman, esq., known to me to be the individual described in, and who executed, the within conveyance, who acknowledged that he executed the same.

ROBERT C. LUDLOW,
Commissioner of Deeds.

Recorded the preceding, at the request of P. W. Radcliff, this 28th of December, at fifty minutes past one p. m.

JAMESON COX, *Register.*

OFFICE OF THE REGISTER OE DEEDS, &C.,
City and County of New York, ss:

487 I have compared the annexed copy with an instrument recorded in this office on the twenty-eighth day of December, 1830, at one o'clock and fifty minutes p. m., in liber 267 of conveyances, page 344, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

I further certify that there is no official seal belonging to this office. Dated this twenty-ninth day of July, A. D. 1863.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman, &c., to Robert Dyson. 26 Dec., 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 14. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

488 This indenture, made the twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, between Robert Dyson, of the city and State of New York, of the first part, and Mathew St. Clair Clarke and Anna R. Clarke, his wife, both of the city of Washington, District of Columbia, of the second part, witnesseth that, for and in consideration of the sum of twenty-one thousand six hundred and fourteen dollars fifty-six cents, lawful money, in hand paid by Mathew St. Clair Clarke & Anna R. Clarke, parties of the second part, the receipt whereof the said Robert Dyson, party of the first part, doth hereby acknowledge before the ensealing and delivery of these presents, the said Robert Dyson, party of the first part, has granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and by these presents does grant, bargain, and sell, remise, release, enfeoff, and confirm, to the said second parties, Mathew St. Clair Clarke and Anna R. Clarke, all and singular the hereinafter-described lots and parcels of ground situate, lying, and being in the State of New York and city of New York, more particularly described as follows, to wit: In the county of Tioga, in the northeast section of township No. one, of Watkins and Flint's purchase, the following subdivisions as surveyed and laid off by Jarius Bentley, on the 10th day of January, 1821—subdivisions No. five, containing 92 acres $\frac{49}{100}$; No. nine, containing 94 acres $\frac{47}{100}$; No. eleven, containing 88 acres $\frac{34}{100}$; No. twelve, containing 92 acres $\frac{53}{100}$; No. thirteen, containing 96 acres $\frac{50}{100}$; No. nineteen, containing 107 acres
489 $\frac{96}{100}$; No. thirty-six, containing 100 acres $\frac{75}{100}$; No. fifty-one, con-

ground to be holden by their several descriptions, be their contents more or less: To have and to hold the said several tracts of land and lots of ground, with the appurtenances and improvements thereon, to him, the said Robert Dyson, party of the third part, his heirs and assigns forever, hereby vesting in him, the said party of the thitd part, all the right and title which he, the said James R. Smith, deceased, in his life-time had in and to the premises aforesaid. And the said parties of the second part do hereby ratify and confirm said sale, and do remise, release, and forever quit-claim to all manner of right, title, interest, and demand which any of them had in and to the said several tracts of land and lots of ground, with the improvements and appurtenances.

In witness whereof the parties to these presents have hereunto set, interchangeably, their hands and seals the day and year first above written.

J. BOORMAN, [L. S.]
M'W. ST. CLAIR CLARKE, [L. S.]
Executors of James R. Smith.
J. C. R. SMITH. [L. S.]
JULIA M. SMITH. [L. S.]
JEANET CLARKE. [L. S.]
M'W. ST. CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]
ELIZABETH C. DUNCAN. [L. S.]

Sealed and delivered in the presence of—
485 W. CRANCH, as to all but J. C. R. Smith and wife and James Boorman.
ROBERT DYSON, 73 *Mercer Street.*
R. C. LUDLOW, for J. Boorman.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that, on this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, before me, William Cranch, chief judge of the circuit court of the United States in and for said District, personally came Mathew St. Clair Clarke, executor of James R. Smith, aforesaid, and also party-grantor in his own right, Jeanet Clarke, and Joseph Duncan, grantors, to me personally known as such, and did severally acknowledge the aforegoing instrument to be their act and deed; and at the same time Anna R. Clarke, wife of said Mathew, and Elizabeth C. Duncan, wife of said Joseph, to me personally known, as grantors in said deed, who, being of full age, and by me examined, separate and apart from their said husbands, and the contents of said instrument being made known to them, confessed that they did severally execute said deed freely, and without any fear or compulsion of their said husbands.

W. CRANCH.

CITY AND STATE OF NEW YORK, *ss:*

On the twentieth day of May, 1830, personally appeared before
486 me James C. R. Smith, and Julia M., his wife, personally known to me to be the persons described in, and who acknowledged that they executed the within deed, for the uses and purposes therein mentioned; and the said Julia M., being examined by me, privately and apart from her said husband, acknowledged that she executed the same

freely, and without fear or compulsion of or from her said husband. All which I do certify. Let the same be recorded.

WILLIAM S. SEARS.
Commissioner of Deeds.

CITY AND COUNTY OF NEW YORK, *ss:*

On the ninth day of July, in the year of our Lord one thousand eight hundred and thirty, before me came James Boorman, esq., known to me to be the individual described in, and who executed, the within conveyance, who acknowledged that he executed the same.

ROBERT C. LUDLOW,
Commissioner of Deeds.

Recorded the preceding, at the request of P. W. Radcliff, this 28th of December, at fifty minutes past one p. m.

JAMESON COX, *Register.*

OFFICE OF THE REGISTER OE DEEDS, &C.,
City and County of New York, ss:

487 I have compared the annexed copy with an instrument recorded in this office on the twenty-eighth day of December, 1830, at one o'clock and fifty minutes p. m., in liber 267 of conveyances, page 344, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

I further certify that there is no official seal belonging to this office. Dated this twenty-ninth day of July, A. D. 1863.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman, &c., to Robert Dyson. 26 Dec., 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 14. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

488 This indenture, made the twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, between Robert Dyson, of the city and State of New York, of the first part, and Mathew St. Clair Clarke and Anna R. Clarke, his wife, both of the city of Washington, District of Columbia, of the second part, witnesseth that, for and in consideration of the sum of twenty-one thousand six hundred and fourteen dollars fifty-six cents, lawful money, in hand paid by Mathew St. Clair Clarke & Anna R. Clarke, parties of the second part, the receipt whereof the said Robert Dyson, party of the first part, doth hereby acknowledge before the ensealing and delivery of these presents, the said Robert Dyson, party of the first part, has granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and by these presents does grant, bargain, and sell, remise, release, enfeoff, and confirm, to the said second parties, Mathew St. Clair Clarke and Anna R. Clarke, all and singular the hereinafter-described lots and parcels of ground situate, lying, and being in the State of New York and city of New York, more particularly described as follows, to wit: In the county of Tioga, in the northeast section of township No. one, of Watkins and Flint's purchase, the following subdivisions as surveyed and laid off by Jarius Bentley, on the 10th day of January, 1821—subdivisions No. five, containing 92 acres $\frac{49}{100}$; No. nine, containing 94 acres $\frac{47}{100}$; No. eleven, containing 88 acres $\frac{34}{100}$; No. twelve, containing 92 acres $\frac{53}{100}$; No. thirteen, containing 96 acres $\frac{50}{100}$; No. nineteen, containing 107 acres
489 $\frac{96}{100}$; No. thirty-six, containing 100 acres $\frac{78}{100}$; No. fifty-one, con-

taining 113 acres $\frac{48}{100}$; No. fifty-five, containing 111 acres $\frac{40}{100}$; No. fifty-six, containing 115 acres $\frac{67}{100}$; in Randolph Township, Broome County, in great lot number 27, subdivisions Nos. two and five; in great lot No. 17, subdivision No. 3; in great lot No. 22, subdivisions Nos. one, five, and six; and in great lot No. 15, subdivision No. six, all whereof contain each 80 acres; in great lot No. seventeen, Fayette, now Easton, subdivision No. one, being the southeast one-fourth part, containing 160 acres: in Tioga County, near Owego, in the third section of township No. 12, Watkins and Flint's purchase, subdivisions No. 14, containing 105 acres, 2 roods, and 24 perches, and fifteen, containing 229 acres, 2 roods, and 14 perches: in Clinton County, township No. six, subdivision No. 2, being the northwest one-fourth part of great lot No. 6, containing 157 acres, 2 roods, and 17 perches; subdivision No. one, being the northeast one-fourth part of great lot No. 57, containing 179 acres, 3 roods, and 16 perches; subdivision No. one, being the northeast one-fourth part of great lot No. 66, containing 212 acres, 2 roods, and 28 perches; subdivision No. two, being the northwest one-fourth part of great lot No. 69, containing 159 acres, 1 rood, and 3 perches;
490 subdivision No. three, being the southeast one-fourth part of great lot No. 84, containing 168 acres and 17½ perches: in Clinton County, township No. 4, subdivision No. three, being the southeast one-fourth part of great lot No. 13, containing 160 acres: in Franklin County, township No. 7, subdivision No. one, being the northeast one-fourth part of great lot No. 75, containing 195 acres, 1 rood, and two perches; a lot containing fifty acres in the subdivision of great lot No. 80, contracted for to William Brown; lot No. two, in the subdivision of great lot No. 90, containing 100 acres; lot No. 2, in subdivision of great lot No. 12, containing 54 acres; subdivision No. 4, (four,) being the southwest one-fourth part of the remainder of great lot No. 45, containing 41 acres, 3 roods, and 24 perches; and a lot, containing fifty acres, in great lot No. 50, contracted for to John Newton: in Tioga County, Chemung, now Erin, in great lot No. 149, subdivision No. two, contracted for to John Joyslyn, containing 101 acres and 1 perch; and subdivision No. fifteen, containing 99 acres, 3 roods, and 30 perches: in Onondaga County, in No. 2, Camillus, subdivision No. one, contracted for to P. Cornell, and now to Brewster, containing 49 acres, 3 roods: in the Hardenburg patent, Ulster County, 5th allotment, subdivision
491 No. 3 of great lot No. 6; subdivision No. two hundred and thirty-eight, containing 143 acres, 2 roods; and No. two hundred and seventy-four, containing 135 acres, 2 roods: in Tioga County, Chemung, in great lot No. 137, subdivision No. 6, contracted for to Asabel Buck, containing 117 acres, 2 roods, and 16 perches; in said county, in great lots Nos. 109, 110, and 113, as subdivided, a lot, being the east one-half of subdivision No. nine, contracted for to Janus Allison or Ellison, containing fifty acres; subdivision No. ten, contracted for to Jacob Woolover, containing 100 acres; and subdivision No. eighteen, containing 96 acres, 2 roods, 16 perches; and in great lot No. 173, in said county, subdivision No. thirteen, containing 104 acres; No. sixteen, containing 101 acres; and No. seventeen, containing 107 acres: in the city of New York, on Stanton street, lots Nos. two, three, and five, as subdivided into nine equal lots, between Forsyth and Eldridge streets, and which lots are formed out of six lots known and designated on the plan of said city as lot No. 1479, the corner of Forsyth and Stanton; No. 1478, on Forsyth; No. 1477, on the same; No. 1455, the corner of Stanton and Eldridge; and Nos. 1456 and 1457, on Eldridge street; in the great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing a part

492 of 17th, 18th, and nineteenth streets, as subdivided, lot No. six, on 17th street, Nos. seventeen, twenty, twenty-six, forty-eight, forty-nine, sixty-three, sixty-six, sixty-seven, on 18th street, Nos. eighty, eighty-five, eighty-six, eighty-nine, one hundred and three, one hundred and four, on 19th street, fractional lots Nos. twenty-nine and thirty-two, on 18th street, and fractional lot No. 12, not on any street; also lots Nos. one and seven, in the subdivision of great lots Nos. 28 and 32, called the Stewart lots, situate between the Seventh and Eighth avenues, on 26th and 27th streets, said great lots being subdivded into eight lots each, being about twenty-four feet ten inches in front and rear, and about two hundred and forty feet deep; all of which said several lots of ground and tracts of land to be holden by their several description, be their contents more or less: To have and to hold the said tracts of land and lots of ground, with the appurtenances and improvements thereon, to them, the said Mathew St. Clair Clarke and Anna R. Clarke, parties of the second, to the only proper use, benefit, and behoof of the said Mathew St. Clair Clarke and Anna R. Clarke, to her and her heirs, and assigns forever, hereby vesting in him, the said Mathew St. Clair Clarke, and in her, the said Anna R. Clarke, her heirs and assigns forever, all right, title, and interest of the said Robert Dyson, party of the first part, in and to the aforesaid-described tracts of land and lots of ground.

493 In witness whereof the said Robert Dyson, party grantor, has hereunto set his hand and affixed his seal, the day and year first hereinbefore written.

ROBERT DYSON. [L. S.]

Signed, sealed, and delivered in the presence of us—

ROBERT C. LUDLOW.

CITY AND COUNTY OF NEW YORK, *ss:*

On the 9th day of July, in the year of our Lord one thousand eight hundred and thirty, before me, came Robert Dyson, known to me to be the individual described in and who executed the above conveyance, who acknowledged that he executed the same.

ROBERT C. LUDLOW,
Commissioner of Deeds.

Recorded the preceeding at the request of P. W. Radcliff, this 28 of December, 1830, at 50 min. past 1 p. m.

JAMESON COX, *Register.*

OFFICE OF THE REGISTER OF DEEDS &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 28th day of December, 1830, at 1 o'clock and 50 min. p. m., in liber No. 267 of conveyances, page 338, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 26th day of July, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) Robert Dyson to M. St. Clair Clarke & wife, 26th Dec., 1829. U. S. circuit court. Clarke vs. Executors of Boorman, Exhibit No. 15. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

494 This indenture, made this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, between Robert Dyson, of the city and State of New York, of the first part, and Joseph Duncan, and Elizabeth C. Duncan, his wife, of the State of Illinois, of the second part, witnesseth, that for and in consideration of the sum of twenty-one thousand five hundred and twenty-two dollars $\frac{90}{100}$, lawful money in hand paid by Joseph Duncan and Elizabeth C. Duncan, his wife, parties of the second part, the receipt whereof the said Robert Dyson, party of the first part, doth hereby solely acknowle'ge before the ensealing and delivery of these presents, the said Robert Dyson, party of the first part, has granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and by these presents does grant, bargain, and sell, remise, release, enfeoff, and confirm, to the parties of the second part, Joseph Duncan and Elizabeth C. Duncan, his wife, all and singular the hereinafter-described lots and parcels of ground, situate, lying, and being in the State of New York, and city of New York, more particularly described as follows, to wit: In the county of Tioga, in the northeast section of township No. one, of Watkins and Flint's purchase, the following subdivisions, as surveyed and laid off by Darius Bently, on
495 the tenth day of January, 1821—subdivision No. six, containing 101 acres $\frac{69}{100}$; No. eight, containing 92 acres $\frac{5}{100}$; No. fifteen, containing one hundred acres; No. twenty-two, containing 100 acres $\frac{56}{100}$; No. twenty-six, containing 101 $\frac{65}{100}$; the east half of No. twenty-eight, containing 47 acres $\frac{39}{100}$; No. thirty-five, containing 100 acres $\frac{34}{100}$; the south half of No. thirty-seven, containing 48 acres $\frac{6}{100}$; No. thirty-eight, containing 100 acres; No. forty-three, containing 97 acres $\frac{80}{100}$: in Broome county, Randolph Township, in great lot No. 15, subdivision No. four, containing 80 acres; in great lot No. 17, subdivision No. five, containing eighty acres, and subdivision No. seven in said lot: in great lot No. 22, subdivision No. 2, in great lot No. 27, subdivision Nos. seven and eight, all containing eighty acres each: in the north part of the southwest section of township No. six, of Watkins and Flint's purchase, subdivision No. thirty-six, containing 164 acres, and subdivision No. thirty-eight, containing two hundred and forty-seven acres, in the third section of township No. 12, Watkins and Flint's purchase, near Owego, subdivision No. eleven, containing 199 acres and 24 perches: in township No. six, Clinton County, in great lot No. six, subdivision No. four, containing 157 acres, 2 roods, 17 perches, being the southwest one-fourth part; in great lot No. 57, subdivision No. two, containing 179 acres, 3 roods, 16 perches, being the northwest one-fourth part; in great lot No. 66, subdivision,
496 No. four, containing 212 acres, 2 roods, 28 perches, being the southwest one-fourth part; in great lot No. 69, subdivision No. four, containing 159 acres, 1 rood, 3 perches, being the southwest one-fourth part; in great lot No. 84, subdivision No. one, containing 168 acres, 17 perches, being the northeast one-fourth part: in township No. 4, Clinton County, subdivision No. four, in great lot No. 13, 160 acres, being the southwest one-fourth part; in township No. 7, Franklin County, subdivision No. one, of remainder of great lot No. 12, containing 82 acres, 1 rood; in great lot No. 33, one hundred and thirty-nine acres, contracted for to Elijah Alvord; in great lot No. 45, subdivision of remainder of two, containing 41 acres, 3 roods, 24 perches, being the northwest one-fourth; in great lot No. 47, fifty acres, contracted for to Simeon Pond, now given up; in great lot No. 75, subdivision No. two, containing 195 acres, 1 rood, and 2 perches, being the northwest one-fourth part, and in great lot No. 90, subdivision No. three, containing 100 acres: in Tioga County, township of Erin, in great lot No. 149, sub-

division No. thirteen, containing 53 acres, 1 rood, 8 perches, being the east one-half contracted for to Peter Blavelt; and No. seventeen, containing 101 acres, 1 rood, 22 perches: in Cortland County, in great lot No. 76, Fabius, now Truxton, subdivision No. one, containing 64 acres $\frac{25}{100}$, contracted for to Loron Carpenter; and subdivision No. two,
497 containing 63 acres $\frac{50}{100}$: in Onondaga County, in great lot No. 2, Camillus, the north half of subdivision No. ten, containing 25 acres, contracted for to Stephen W. Tappan; in Ulster County, in the fifth allotment, subdivision No. three, great lot No. six, Hardenburgh patent, subdivision No. two hundred and seventy-two, containing 134 acres, 3 roods; and No. two hundred and seventy-five, containing 141 acres, 2 roods: in Tioga County, Chemung township, in great lot No. 137, subdivision No. four, the west half thereof, containing 51 acres and one-half, contracted for to Jonathan Robbins; in Tioga County, Chemung Township, in the subdivision of great lots Nos. 109, 110, and 113, subdivision No. 3, containing 78 acres, 2 roods, 26 perches, contracted for to Willis W. Bennet; and No. thirteen, containing 100 acres: in the county of Tioga, in great lot No. 173, subdivision No. 3, (three,) containing 131 acres; subdivision No. six, containing 120 acres; subdivision No. ten, containing 103 acres; and subdivision No. fourteen, containing 117 acres: in the city of New York, lot No. 653 in the plan of said city, being lot No. 8, in the subdivision of said estate lying on Eldridge street, and next the corner lot as laid off on Stanton street; bounded on the south by a lot of Jeanet Clarke, lots Nos. 6, 8, and 9, on Stanton street, as subdivided into nine equal lots, between Forsyth and Eldridge
498 streets, and which lots are formed out of six lots known and designated on the plan of said city as lots No. 1479, corner of Forsyth and Stanton streets, No. 1478, on Forsyth street, No. 1479, on Forsyth street, No. 1455, corner of Stanton and Eldridge streets, and Nos. 1456 and 1457, on Eldridge street; in the great lot called the John Kerr lot, lying between the Fifth and Sixth avenues and embracing a part of the 17th, 18th, and 19th streets, as subdivided, lots Nos. twenty-seven, forty-seven, twenty-eight, thirty, thirty-five, fifty-two, fifty-three, sixty, sixty-one, and seventy-five, on 18th street; Nos. ninety-one, ninety-two, and ninety-nine, on 19th street; and fractional lots Nos. thirteen, seventy-six, and seventy-seven, and lot No. one hundred on 19th street; all of which said several tracts of land and lots of ground to be holden by their several descriptions, be their contents more or less: To have and to hold the said tracts of land and lots of ground, with the appurtenances and improvements thereon, to them, the said Joseph Duncan and Elizabeth C. Duncan, parties of the second part, their heirs and assigns forever to the only proper use, benefit and behoof of the said Joseph Duncan and Elizabeth C. Duncan, to her and her heirs and assigns forever; hereby vesting in him, the said Joseph Duncan, and in her the said Elizabeth, her heirs and assigns forever, all the right, title, and interest of the said Robert Dyson, party of the first part, in and to the aforesaid tracts of land and lots of ground as above described.

499 In witness whereof, the said Robert Dyson, party grantor, has hereunto set his hand and affixed his seal, the day and year first herein before written.

ROBERT DYSON. [L. S.]

Signed, sealed, and delivered in presence of us—
ROBERT C. LUDLOW.

CITY AND COUNTY OF NEW YORK, *ss:*

On the ninth day of July, in the year of our Lord one thousand eight hundred and thirty, before me came Robert Dyson, known to me to be the individual described in, and who executed the above conveyance, who acknowledged that he executed the same.

ROBERT C. LUDLOW,
Commissioner of Deeds.

Recorded the proceeding at the request of P. W. Radcliff, this 28th of December, 1830, at 50 minutes past 1, p. m.

JAMESON COX, *Register.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 28th day of December, 1830, at 1 o'clock and 50 minutes p. m., in liber No. 267 of conveyances, page 341, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 28th day of July, 1862.

JOHN KEYSER, *Register.*

(Endorsed:) Robert Dyson to Joseph Duncan & wife, 26 Dec., 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 16. Knox & Mason, sol'rs for def't. Filed Sept. 12, 1871.

500 This indenture, made this second day of January, in the year of our Lord one thousand eight hundred and thirty-five, between Mathew St. Clair Clarke, of the county of Washington, in the district of Columbia, in his own right, and as trustee of Jeanet Clarke, (widow of John X. Clarke, deceased) of Washington City, of the first part, the said Jeanet Clarke, of the second part, and William H. Leroy, of the city of New York, broker, of the third part: Whereas, the said party of the second part, did in and by a certain indenture, bearing date the thirteenth day of May, in the year one thousand eight hundred and thirty, and recorded in the register's office of the city and county of New York, in lib. 266 of conveyances, page 327, the 2d day of October, 1830, made and executed under her hand, purporting to be executed under her seal, convey unto the said party of the first part, in fee-simple, all her estate arising from the estate of her father, James R. Smith, Hannah Rodgers, (formerly Smith,) her mother: upon trust, and with power, among other things, to sell and dispose of the same, and in the name of the said party of the second part, or of the said party of the first part, to execute good and sufficient conveyances therefor, and out of the proceeds to retain the sum of two thousand and two hundred and forty-one dollars and six cents, therein mentioned and alleged to be due from the said party of the second part to the said party of the first part, and appropriate the residue upon certain tracts therein mentioned,

501 and whereas, the said party of the second part did, in and by a certain deed, bearing date the thirteenth day of July, in the year one thousand eight hundred and thirty, and recorded in the said register's office in lib. 266 of conveyances, page 329, on the 2d of October, 1830, convey to the said party of the first part, in fee-simple, in satisfaction of the said debt, certain real estate in the city of New York,

which the said party of the first part has accepted in full satisfaction thereof, or by reference to the said indentures or the record thereof will more fully appear: Now, therefore, this indenture witnesseth, that the said party of the first part, in his own right, and also in execution of the powers contained in the said indenture, or deed of trust, in consideration of the premises and of the sum of thirty thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the third part, at or before the ensealing and delivery of these presents, (and by him received to and for the use of the said party of the second part, testified by executing these presents, and for the other uses and trusts contained in said deed of trust,) the receipt whereof is hereby acknowledged, and therefrom the said party of the third part, his heirs, executors, administrators, and assigns, *therefrom* discharged; and the said party of the second part, for and in consideration of the sum of five dollars, to her in hand paid by the said party of the third
502 part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and therefrom the said party of the third part, his heirs, executors, administrators, and assigns, forever discharged, have granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed, and confirmed, and by these presents do, and each of them doth, grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the said party of the third part, his heirs and assigns forever, all those twenty-four certain lots, pieces, or parcels of land, situate, lying, and being in the Twelfth ward of the city of New York, between the Fifth and Sixth avenues and Seventeenth and Nineteenth streets, distinguished on a map of the estate of James R. Smith in the said ward, filed in the office of register in, and for the city and county of New York, dated 19th October, 1829, made by George B. Smith, city surveyor, by the numbers 2, 3, 4, 7, 11, 14, 15, 18, 25, 31, 34, 50, 51, 56, 57, 70, 71, 74, 81, 82, 95, 96, 101, and 102, (two, three, four, seven, eleven, fourteen, fifteen, eighteen, twenty-five, thirty-one, thirty-four, fifty, fifty-one, fifty-six, fifty-seven, seventy, seventy-one, seventy-four, eighty-one, eighty-two, ninety-five, ninety-six, one hundred and one, and one hundred and two;) said lots numbers 2, 3, and 4, (two, three, and four,) together bounded southwestwardly, in front, 30 feet 7 inches by the northeasterly side of Seventeenth street; southeastwardly, ninety-two feet, by a lot distinguished on the said map by the number 5, (five;) northeastwardly by a line drawn at the half distance between and parallel to Seventeenth and Eighteenth streets, forming the rear of lots distinguished on the said map by the numbers 16, 17, and 18, (sixteen, seventeen, and eighteen,) seventy-eight feet; and
503 westwardly by land of John Jacob Astor, one hundred and four feet eight inches; said lot number 4 (four) being twenty-five feet in breadth on front and rear, and ninety-two feet in depth on each side; said lots numbers 2 and 3 (two and three) together, being in breadth in front on Seventeenth street aforesaid five feet seven inches, in the rear fifty-three feet, on the southeasterly side 92 (ninety-two) feet, on the westerly side one hundred and four feet eight inches; and also so much of the land lying in front of the said lots 3 and 4, (three and four,) laid down on said map as Seventeenth street, as extends to the middle thereof, and is bounded northeastwardly by said lots 3 and 4, (three and four,) westwardly by land of John Jacob Astor, being a continuation of the westerly line of said lots 2 and 3, (two and three,) southeastwardly by the southeasterly line of said lot number 4, (four,) continued to the middle of said street, and southwestwardly by a line drawn through the middle of said land, designated on said map as such street; said lots

numbers 14 and 15, (fourteen and fifteen,) together, bounded northeastwardly in front by the southwesterly side of Eighteenth street aforesaid fifty-two feet; southeastwardly by a lot distinguished on the said map by the number 16, (sixteen,) ninety-two feet; southwestwardly by the line drawn at the half distance between and parallel to Seventeenth and Eighteenth streets aforesaid, forming the rear of said lot number
504 *number* two, (2,) three feet, and eastwardly by land of John Jacob Astor, one hundred and four feet eight inches; said lot numbered 18, (eighteen,) bounded northeastwardly in front by the southwesterly side of Eighteenth street, aforesaid; southeasterly by a lot, distinguished on said map by the number 19, (nineteen;) southwestwardly, in the rear, by a line drawn at the half distance between and parral'el to Eighteenth and Seventeenth street aforesaid, forming the rear of said lot number 4, (four;) and northwestwardly by a lot, distinguished on the said map by the number 17, (seventeen,) being twenty-five feet in breadth in front and rear, and ninety-two feet in depth on each side; said lots, numbers 25 and 11, (twenty-five and eleven,) bounded northeastwardly in front by the southwesterly side of Eighteenth street aforesaid, twenty-five feet; southeastwardly by two lots distinguished on said map by the numbers 26 and 12, (twenty-six and twelve,) one hundred and twenty-five feet; southwardly, in the rear, by land now or late of Hannah Murray, thirty-four inches; and northwestwardly by two lots, distinguished on said map by the numbers 24 and 10, (twenty-four and ten,) one hundred and forty-one feet six inches; said lot number 25, (twenty-five,) being 25 feet in breadth in front and rear, and *and* extending to the line drawn at the half distance be-
505 tween and parral'el to Eighteenth and Seventeenth streets, aforesaid, and ninety-two feet in depth on each side; said lot number 31, (thirty-one,) bounded northeastwardly in front by the southwesterly side of Eighteenth street; southeastwardly by a lot distinguished on the said map by the number 32, (thirty-two;) southwestwardly, in the rear, by land now or late by Edmund Morewood; and northwestwardly by a lot distinguished on said map by the number 30, being in breath, in front, twenty-five feet; in the rear, twenty-six feet six inches in length; on the southeasterly side, sixty feet six inches; on the northwesterly side, sixty-six feet; said lot number 34, (thirty-four,) bounded northeastwardly in front, by the southwesterly side of Eighteenth street aforesaid; southeastwardly by a lot distinguished on said map by the number 35, (thirty-five;) southwestwardly, in the rear, by land now or late of Edmund Morewood, and land now or late belonging to the estate of Isaac Clason, and northwestwardly by a lot distinguished on said map by the number 33, (thirty-three,) being in breadth, in front, twenty-five feet; in the rear, twenty-six feet six inches; in length, on the southeasterly side, forty-three feet; and on the northwesterly side, forty-nine feet; said lots numbers 50, 51, 101, and 102, (fifty, fifty-one, one hundred and one, one hundred and two,) taken together,
506 bounded southwestwardly by the northeasterly side of Eighteen' street aforesaid; northwestwardly by two lots, distinguished on the said map by the numbers 52 and 100, (fifty-two and one hundred;) northeasterly by the southwesterly side of Nineteenth street, aforesaid; southeastwardly by two lots, distinguished on the said map by the numbers 49 and 103, (forty-nine and one hundred and three,) each side, and extending to the line drawn at the half distance between and parallel to Eighteenth and Nin'teenth streets aforesaid; said lots 101 and 102, fronting on 19th street aforesaid; and said lots 50 and 51, (fifty and fifty-one,) fronting on Eighteenth street aforesaid, being each

twenty-five feet in breadth in front and rear; ninety-two feet in depth on each side; said lots numbers 56, 57, 95, and 96, (fifty-six, fifty-seven, ninety-five, and ninety-six,) together bounded northeastwardly by the southwesterly side of Nineteenth street; southeastwardly by two lots, distinguished, on said map, by the numbers 55 and 97, (fifty-five and ninety-seven;) southwestwardly by the northeasterly side of Eighteen' street aforesaid; and northwestwardly by two lots, distinguished on said maps, by the numbers 58 and 94; said lots (fifty-six) 56 and 57, (fifty-seven,) fronting on Eighteenth street; and said lots 95 and 96, (ninety-five and ninety-six,) pointing on Nineteenth street, and being each twenty-five feet in breadth in front and rear, and in depth,
507 on each side, ninety-two feet, extending to the line drawn at the half distance between and parrallel to Eighteenth and Nineteenth streets aforesaid; said lots numbers 70, 71, 81, and 82, together bounded southwestwardly, in front, by the northeasterly side of Eighteenth street aforesaid; southeastwardly by two lots, distinguished on said map by the numbers 69 and 83, (sixty-nine and eighty-three;) northeasterly by the southwesterly side of Nineteenth street aforesaid; northwestwardly by two lots, distinguished on said map by the numbers 72 and 80, (seventy-two and eighty;) said lots, 81 and 82, (eighty-one and eighty-two,) fronting on Nineteenth street, aforesaid; and 70 and 71, (seventy and seventy-one,) fronting on Eighteenth street aforesaid, and being each twenty-five feet in breadth in front and rear, and ninety-two feet in depth on each side, and extending to the line drawn at the half distance between and parallel to Eighteenth and Nineteenth streets aforesaid; said lot number 74, (seventy-four,) bounded southwestwardly in front by the northeasterly side of Eighteenth street, twenty-five feet; southeastwardly by a lot, distinguished on said map, by the number 73, (seventy-three,) ninety-two feet; northeastwardly, in the rear, eight feet nine inches, by a line drawn at the half distance, between and parallel to Eighteenth and Nineteenth streets aforesaid, forming the rear of a lot, distinguished on the said map by the number 78, (seventy-eight;) northwardly by land now or late known as the Southampton
508 road, thirty feet four inches; and northwestwardly sixty-seven feet by lots distinguished on said map by the numbers 75, 76, and 77, (seventy-five, seventy-six, and seventy-seven,) together with all and singular the rights, members, privileges, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever of the said parties of the first and second parts, in law or equity, of, in, or to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the same with the appurtenances, unto the said party of the third part, his heirs, assigns, to his and their only use, benefit, and behoof forever. And the said parties of the first and second parts separately, each for himself and herself, and not jointly one for the other, and for their respective heirs, executors, and administrators, do and each of them doth, covenant, grant, and agree, with and to the said party of the third part, his heirs and assigns, that they, the said parties of the first and second parts respectively, their respective heirs, and all other persons deriving any legal or equitable estate, right, title, or interest in and to the said premises, from, under, or in trust for them, shall and will at any time hereafter, at the request and the proper costs and charges of the
509 said party of the third part, his heirs and assigns, made, do, and execute, or cause to be made, done, and executed, all such further

and other reasonable acts, conveyances and assurances, in the law, for the better and more effectually vesting and confirming the premises hereby granted, or intended so to be, in and to the said party of the third part, his heirs and assigns forever, as by the said party of the third part, his heirs or assigns, his or their counsel learned in the law, shall be reasonably devised, advised, or required; and the said party, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree with the said party of the third part, his heirs and assigns, that he, the said party of the first part, has not made, done, suffered or committed any act, matter, or thing, by means whereof the estate of the said party of the third part, his heirs or assigns in the said premises, or any part thereof, shall or may be charged, defeated, impeached, impa'red, or encumbered; and the said party of the second part, for herself, her heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the third part, his heirs and assigns, that the said party of the third part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-described premises, and every part thereof,
with the appurtenances, without any let, suit, trouble, molesta-
510 tion, eviction, or disturbance of the said party of the second part, her heirs and assigns, or any other person or persons lawfully claiming or to claim the same; and that the said premises, and every part thereof, now are free, clean, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature or kind soever; and the said party of the second part, and her heirs, the above-described premises, with the appurtenances, unto the said party of the third part, his heirs and assigns, against the said parties of the first and second parts, and their heirs, and against all and every persons whomsoever, lawfully claiming or to claim the same, shall and warrant and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

M'W S'T CLAIR CLARKE, [L. S.]
Trustee of Jeanet Clarke.
M'W S'T CLAIR CLARKE. [L. S.]
JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—(words "being each twenty-five feet in breadth in front and rear, and ninety-two feet in depth on each side," between the 9th and 10th lines and "sixty-seven feet" between 42d and 43d lines of 2d page interlined)

JAMES McC. COLGATE.
ANNA L. SMITH.

WASHINGTON COUNTY,
District of Columbia, ss:

511 Be it remembered that, on this twenty-second day of January, one thousand eight hundred and thirty-five, before me, William Cranch, chief judge of the circuit court of the United States for said district, personally came Mathew St. Clair Clarke, trustee of Jeanet Clarke, within named and also a party-grantor in his own right, party of the first part in the aforesaid deed, personally known to me as party-grantor, and did acknowledge*d* the aforegoing instrument to be his act and deed; and at the same time also came Jeanet Clarke, party of the

second part in the aforegoing deed, also personally known to me as party-grantor, and did acknowledge the same to her act and deed.

W. CRANCH.

Recorded the preceeding at the request of A. L. Robertson, the 26th day of March, 1835, at 20 min. past 3. p. m.

W'M H. BUNN, *Reg.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 26th day of March, A. D. 1835, at 3 o'clock 20 min. p. m., in liber 326 of conveyances, page 391, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 1st day of May, 1863.

JOHN KEYSER, *Register.*

(Endorsed:) M. St. Clair Clarke, trustee, &c., to W. H. Le Roy. Dated January 2, 1835. U. S. circuit court. Clarke vs. executors of Boorman. Exhibit No. 17. Knox & Mason, sol'rs for def'ts. Deed. Filed Sept. 12, 1871.

512 This indenture, made this thirteenth day of May, anno Domini one thousand eight hundred and thirty, between Jeanet Clarke, widow, late of Greencastle, Pennsylvania, and now of Washington City, of the first part, and Matthew St. Clair Clarke, of said city, of the other part, witnesseth, that for divers good and valuable considerations, as well as the sum of one dollar in hand paid to said Jeanet by said Matthew, before the delivery of these presents, and also to re-imburse said Matthew the sum of two thousand two hundred and forty-one dollars and six cents, with interest from the first day of October last, the said Jeanet hath granted, bargained and sold, aliened, enfeoffed, confirmed, assigned, and transferred, and by these presents doth grant, bargain, and sell, alien, enfeoff, confirm, assign, and transfer to him, the said Matthew, his heirs and assigns, all and every part of the estate of her, the said Jeanet, whether real, personal, or mixed, arising out of the estate of her late father, James R. Smith, or her mother, late Hannah Rodgers, both deceased, wherever the same may be, and in whatsoever manner holden or claimed, and whether reduced into possession or not; all which estate will fully appear by the settlement of the heirs of said James R. Smith, deceased, and Hannah Rodgers, made in October last: To have and to hold the same, and every part and parcel thereof, to him, the said Matthew, his heirs and assigns, forever: in trust, nevertheless, to and for the following uses, intents and purposes, and for no
513 other, to wit: to sell and dispose of the same or any part thereof, as he, the said Matthew, may think fit, and in his own name as trustee, or my name, as he may choose, to make conveyances, releases, and acquittances therefor, including general warranty deeds, or to rent and lease the same, or any part, and to collect any monies due or becoming due, and to make deeds for lands sold previous to this date, and to do all other acts necessary for the entire control, management, and disposal of said estate, as I myself could do; and upon this further trust, that he may pay himself the above-mentioned sum of two thousand two hundred and forty-one dollars and six cents, with interest as aforesaid, either in money or by part of the real estate in the city of New York, conveyed to me as part of my mother's estate, or out of the one-third part of my father's estate, conveyed to me by his executors, taking

the same at the valuation made before the division of said estate, and also that the proceeds of the sales of the whole of the remainder, he will appropriate as I shall direct during my life-time, and in case of my death, leaving my son George Augustus living under the age of twenty-one years, that then the proceeds, (not confining himself merely to the income or interest, where it is in his opinion necessary,) or so much as he may think proper, he shall expend on him, the said George Augustus, in his maintenance and education; and in case the said George
514 Augustus should die before he arrives at the age of twenty-one years, and without lawful issue living at his death, then the whole of the estate remaining, which is held by me for one-third of my father's estate, and that held by me the division of my mother's estate, shall, whether held real estate or in monies raised therefrom, shall be held in trust by him, the said Matthew, for the use and benefit of my sister, Anna Rhea Clarke, his wife, and her children, with powers of sale and appropriation as she may direct, and upon this further trust, that upon the like contingencies respecting me, the said Jeanet, and said George Augustus, as above mentioned, then the whole of the two-thirds of my estate, as designated in the said division, and conveyed to me by deed from Robert Dyson, as remains undisposed of, shall be disposed of by said Matthew, according to the terms of the will of my father, James R. Smith, said Matthew not to be held responsible for any part or portion of said two-thirds, but such as shall remain in his hands on the death of said George Augustus, without issue, as aforesaid; said Jeanet, however, retaining the power, nevertheless, by deed, to alter and change said last-mentioned trust of the remainder of said two-thirds unexpended; and further, that for his care, trouble, and expenses, said Mat'hew shall and may retain a reasonable compensation if he pleases so to do.

Witness my hand and seal.

[L. S.] her JEANET × CLARKE. mark.

515 Signed, sealed, and delivered in presence of—(the mark being made instead of the signature in consequence of previous disease,)
ANNA M. CALDWELL.
T. HAETTER CRAWFORD.

The interlineation named in the acknowledgment first being made.
NOAH FLETCHER.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that on this twenty-first day of July, one thousand eight hundred and thirty, before me, William Cranch, chief judge of the circuit court of the United States for said District, personally came Jeanet Clarke, the grantor in the aforegoing deed, to me personally known as such, and did acknowledge the same to be her act and deed, and that the same was retained in her possession until the thirteenth day of the present month, when the same, after making divers deeds, on and before that day, was duly delivered, the interlineations of the words "of the sales" being first made, and also the words "or my name, as he may choose" and the words "including general warranty deeds."

W. CRANCH.

Recorded the preceding at the request of Robert Dyson, this 2d of October, 1830, at 23 min. past 11 a. m.

JAMESON COX, *Register.*

516 OFFICE OF THE REGISTER OF DEEDS, &C.,
City & County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office, on the 2d day of October, A. D. 1830, at 11 o'clock 23 min. a. m., in liber 266 of conveyances, page 327, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 29th day of April, 1863.

JOHN KEYSER, *Register.*

(Endorsed:) Jeanet Clarke to M. St. Clair Clarke. Dated May 13, 1830. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 18. Knox & Mason, sol'rs for def'ts. Filed Sep't 12, 1871.

517 This indenture, made the fifteenth day of June, in the year one thousand eight hundred and thirty-five, between Jeanet Clarke, of Greencastle, in the State of Pennsylvania, widow, of the first part, and William A. Coit, of the city and State of New York, builder, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of three thousand one hundred dollars, lawful money of the United States of America, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged from the same by these presents, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of ground, with the buildings thereon erected, situate, lying, and being on the westerly side of Elizabeth street, between Grand and Hester street', in the Fourteenth ward of the city of New York, known and distinguished on a map of the late Nicholas Bayard's east farm, made by Casimer Th. Goerck, surveyor, a copy of
518 which is filed in the office of the register of the city and county of New York, as lot (199) number one hundred and ninety-nine, bounded easterly in front by Elizabeth street; southerly by a lot distinguished on the said map as No. 198, westerly in the rear by a lot distinguished on the said map as No. 210; and northerly by a lot distinguished on said map as No. 200; the said lot being in breadth in front and rear each twenty-five feet, and in depth on each side ninety-four feet, be the said dimensions more or less, and being the same premises which were conveyed to the said party of the first part by James Boorman and Mat'hew St. Clair Clarke, executors, &c., of James R. Smith, deceased, and the heirs of the said James R. Smith, by deed bearing date 15 November, 1829, recorded in the said register's office, in lib. 260 of conveyances, page 409, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estates, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above-granted, bargained, and
519 described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said Jeanet Clarke, for her-

self and for her heirs, executors, and administrators, doth covenant, grant, and agree, to and with the said party of the second part, his heirs and assigns, that the said Jeanet Clarke, at the time of the sealing and delivery of these presents, is lawfully seized in her own right of a good, absolute, and indefeasible estate of inheritance, in fee-simple of and in all and singular the above-granted bargained, and described premises, with the appurtenances, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, her heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments,
520 and encumbrances of what nature or kind soever; and also that the said party of the first part, and her heirs and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for her or them, shall and will at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required. And the said Jeanet Clarke, and her heirs, the above-described and hereby-granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and her heirs, and against all and
521 every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—(NOTE.—The middle letter in the name of the grantee, and the words "party" and "her" on the second page being previously written on erasure.)

ROBERT DYSON.

D. P. RICKER.

STATE OF NEW YORK,

And City and County of New York, ss:

On this ninth day of July, A. D. 1835, before me personally appeared Jeanet Clarke, proven to my satisfaction to be such person by the oath of Robert Dyson, one of the subscribing witnesses to the foregoing indenture of deed, to me known, who being by me duly sworn, did state

that he resides in the city of New York, and that he knows the said Jeanet Clarke, to be the same person described in, and who executed the foregoing indenture of deed. And thereupon the said Jeanet
522 Clarke duly acknowledged that she executed the same, for the uses and purposes therein mentioned.

D. P. RIKER,
Commissioner of Deeds.

Recorded the preceeding at the request of William A. Coit, July 31st, 1835, at 40 minutes past 12 p. m.

WILLIAM H. BUNN, *Reg.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 31st day of July, A. D. 1835, at 12 o'clock 40 min. p. m., in liber 334 of conveyances, page 513, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 29th day of April, 1863.

JOHN KEYSER, *Register.*

(Endorsed:) Jeanet Clarke to W'm A. Coit, dated June 15, 1835. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 19, Knox & Mason, sol'rs for def'ts. Deed. Filed Sept. 12, 1871.

523 This indenture, made this twenty-sixth day of December, anno Domini one thousand eight hundred and twenty-nine, between Robert Dyson, of the city and State of New York, of the first part, and Jeanet Clarke, widow, Greencastle, Pennsylvania, of the second part, witnesseth, that for and in consideration of the sum of twenty-one thousand five hundred and seventy-three dollars, thirteen cents, lawful money, in hand paid by Jeanet Clarke, party of the second part, the receipt whereof the said Robert Dyson, party of the first part, doth hereby acknowledge, before the ensealing and delivery of these presents; the said Robert Dyson, party of the first part, has granted, bargained, and sold, remised, released, enfeoffed, and confirmed, and by these presents does grant, bargain, and sell, remise, release, enfeoff, and confirm, to the said second party, Jeanet Clarke, her heirs and assigns, all and singular the hereinafter-described lots and parcels of ground, situate, lying, and being in the State of New York and city of New York, more particularly described as follows, to wit: In the northeast section of township No. one, Watkins & Flint's purchase, Tioga County, the following subdivisions, as laid off and surveyed by Darius Bentley, on the tenth day of January, 1821, to wit: lots No. 3, containing 68 acres $\frac{56}{100}$; No. seven, containing 99 acres $\frac{12}{100}$; No. eighteen, containing 100 acres $\frac{48}{100}$; No. twenty-seven, containing 99 acres $\frac{9}{100}$; and west half of No.
524 twenty-eight, containing 47 acres $\frac{39}{100}$; sold together to William Fisk, by articles of agreement; No. thirty-one, containing 99 acres $\frac{20}{100}$; No. forty-two, containing 102 acres $\frac{8}{100}$; No. forty-four, containing 94 acres $\frac{78}{100}$; No. fifty, containing 119 acres $\frac{18}{100}$; and No. fifty-four, containing 117 acres $\frac{95}{100}$. In Randolph Township, Broome County, subdivision No. three, in great lot No. 15; subdivisions Nos. four and six, in great lot number 17; subdivisions Nos. three, seven, and eight, in great lot No. 22; sudivisions Nos. one and three, in great lot No. 27; all and every of said subdivisions containing eighty acres. In great lot

No. 17, Fayette, now Easton, subdivision No. two, being the southwest one-fourth part, contracted for to Richard Mudge and Jesse Skinner, containing 160 acres. In Tioga County, township No. six, of Watkins and Flint's purchase, north part of southwest section; subdivision No. thirty-two, containing 297 acres, and in the northwest section of township No. nine, as above, subdivision No. two, south half thereof, containing 101 acres; and No. four, west half thereof, containing 101 acres. Also, in township No. six, Clinton County, subdivision No. one, being the northeast one-fourth part of great lot No. six, containing 156 acres, 2 roods and 17 perches; subdivision No. three, being the southeast one-fourth part of great lot fifty-seven, containing 179 acres,
525 3 roods, 16 perches; subdivision No. two, being the northwest one-fourth part of great lot No. sixty-six, containing 212 acres, 2 roods, 28 perches; subdivision No. one, being the northeast one-fourth part of great lot No. sixty-nine, containing 159 acres, 1 rood, 3 perches; and subdivision No. two, being the northwest one-fourth part of great lot No. eighty-four, containing one hundred and sixty-eight acres, and 17½ perches. In township No. four, Clinton County, subdivision No. two, being the northwest one-fourth part of great lot No. thirteen, containing 160 acres. In township No. seven, Franklin County, subdivision No. three of remainder of great lot No. twelve, containing 82 acres, 1 rood; subdivision No. three of remainder of great lot number 45, being the southeast one-fourth part, coataining 41 acres, 3 roods, 24 perches; a subdivision of great lot No. 47, being 50 acres, contracted for to Rufus Morse; subdivision No. two, being the northeast, being the one-fourth part of the remainder of great lot No. 50, containing 82 acres, 1 rood; subdivision No. one, being the south half of the Chamberlain lot, in great lot No. fifty-nine, containing 140 acres; subdivision No. three, being the southeast one-fourth part of great lot No. seventy-five, containing 195 acres, one rood, and two perches; and subdivision No. five of great lot No. ninety, containing one hundred acres. In the township of Erin, Tioga County, in great lot number one hundred and
526 forty-nine, subdivision No. six, containing one hundred and one acres, and one perch; subdivision No. nineteen, containing one hundred and sixteen acres, and thirty-five perches; contracted for to Martin and Stephen Derry. In great lot No. seventy-six, Fabius, now Truxton, Cortland County, subdivision No. eight, contracted for to Job Whitemarsh, containing 56 acres. In Ulster County, Hardenburgh patent, 5th allotment, subdivision No. 3 of great lot No. 6, the subdivision No. two hundred and thirty-seven, containing 140 acres, 2 roods, and No. two hundred and sixty-seven, containing 136 acres. In the township of Chemung, Tioga County, great lot No. 137, subdivision No. seven, containing 117 acres, 2 roods, 16 perches; and the west one-half of subdivision No. eight, contracted for to George Cooper, containing 58 acres, 3 roods, and 8 perches; also, subdivision No. fifteen, containing 62 acres, 3 roods, and 29 perches. In last aforesaid county, in great lots Nos. 109, 110, and 113, as subdivided, lot No. six, contracted for to James Boylan, containing 98 acres, and lot No. 17, contracted for to Brown, containing 109 acres, 1 rood, and 34 perches; and in great lot No. 173, in said county, subdivision No. eleven, containing 102 acres, subdivision No. fifteen, containing 120 acres, and subdivision No. eighteen, containing 98 acres. In the city of New York, on Stanton
527 street, lots Nos. one, four, and seven, as subdivided into nine equal lots, between Forsyth and Eldridge streets, and which lots are formed out of six lots known and designated on the plan of said city as lot No. 1479, the corner of Forsyth and Stanton, No. 1478 on

Forsyth, No. 1477, on same, No. 1455, the corner of Stanton and Eldridge, and Nos. 1456 and 1457 on Eldridge street. In the great lot called the John Kerr lot, lying between the Fifth and Sixth avenues, and embracing a part of 17th, 18th, and 19th streets, as subdivided, lot No. seven, on 17th street, Nos. fifty, fifty-one, seventy, seventy-one, on 18th street; Nos. eighty-one, eighty-two, ninety-five, ninety-six, one hundred and one, one hundred and two, on 19th street; and fractional lots Nos. thirty-one and thirty-four on 18th street; also lots Nos. two and six in the subdivision of great lots Nos. 28 and 32, called the Stewart lots, situate between the Seventh and Eighth avenues, on Twenty-sixth and Twenty-seventh streets, said great lots being subdivided into eight lots, each being about twenty-four feet ten inches in front and rear, and about two hundred and forty feet deep, all of which said several tracts of land and lots of ground to be holden by their several descriptions, be their contents more or less: To have and to hold the said tracts of land and lots of ground, with the appurtenances and im-
528 provements thereon, to her, the said Jeanet Clarke, party of the second part, her heirs and assigns, forever, to the only proper use, benefit, and behoof of the said Jeanet Clarke, her heirs and assigns, forever, hereby vesting in her, the said Jeanet Clarke, her heirs and assigns, forever, all the right, title, and interest of the said Robert Dyson, party of the first part, in and to the aforesaid described tracts of land and lots of ground.

In witness whereof the said Robert Dyson, party grantor, has here'nto set his hand and affixed his seal the day and year first herein written.

ROBERT DYSON. [L. S.]

Signed, sealed, and delivered in presence of us—
ROBERT C. LUDLOW.

CITY AND COUNTY OF NEW YORK, *ss:*

On the ninth day of July, in the year of our Lord one thousand eight hundred and thirty, before me, came Robert Dyson, known to me to be the individual described in and who executed the above conveyance, who acknowledged that he executed the same.

ROBERT C. LUDLOW,
Commissioner of Deeds.

Recorded the preceeding, at the request of P. W. Radcliff, this 28th of December, 1830, at 50 min. past 1 p. m.

JAMESON COX, *Register.*

529 OFFICE OF THE REGISTER OF DEEDS, &C.,
CITY AND COUNTY OF NEW YORK, *ss:*

I have compared the annexed copy with an instrument recorded in this office on the 28th day of December, 1830, at 1 o'clock and 50 min. p. m., in liber No. 267 of conveyances, page 335, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 26th day of July, A. D. 1862.

JOHN KEYSER, *Register.*

(Endorsed:) Robert Dyson to Jeanet Clarke, 26 December, 1829. Recorded 28 December, 1830. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 20. Knox & Mason, sol'rs for def'ts. Filed September 12, 1871.

530 This indenture, made the fourteenth day of October, in the year one thousand eight hundred and thirty-five, between Mat'hew St. Clair Clarke, of the city of Washington, in the District of Columbia, gentleman, in his own right and as trustee of Jeanet Clarke, of Greencastle, in the State of Pennsylvania, widow, of the first part; the said Jeanet Clarke, of the second part, and William A. Coit, of the city and State of New York, builder, of the third part. Whereas the said party of the second part, by a certain instrument executed under her hand, but purporting to have been executed under seal, dated the thirteenth day of May, one thousand eight hundred and thirty, and recorded in the register's office in and for the city and county of New York, in liber No. 266 of conveyances, page 327, did convey, or intended to convey, unto the said party of the first part, in fee-simple, all her estate arising from the estates of her father, James R. Smith, and of her mother, Hannah Rodgers, formerly Smith, now both deceased, upon trust, and with power, among other things, to sell and dispose of the same, and in the name of the said party of the second part or of the said party of the first part, to execute good and sufficient conveyances therefor, and out of the proceeds to retain the sum of two thousand two hundred and forty-
531 one dollars six cents, therein mentioned and alleged to be due from the said party of the second part to the said party of the first part, and appropriate the residue upon certain trusts therein mentioned; and whereas the said party of the second part, by her certain deed, dated the thirteenth day of July, one thousand eight hundred and thirty, and recorded in the said register's office, in liber No. 266 of conveyances, page 329, did convey to the said party of the first part, in fee-simple, in satisfaction of said debt, certain real estate in the city of New York, which the said party of the first part has accepted in full satisfaction thereof, as by reference to the said instrument and deed or the record thereof will more fully appear; and whereas the said party of the second part, by her certain other deed, dated the fifteenth day of June last past, and recorded in the said register's office, did, for the sum of three thousand one hundred dollars, convey the lot of ground hereinafter described, with its appurtenances, unto the said party of the third part, in fee, as will more fully appear on reference to the said last-mentioned deed or the record thereof: Now, therefore, this indenture witnesseth that the said parties hereto of the first and second part, in order
532 to confirm the title of the said party hereto of the third part to the said lot of ground, with its appurtenances, and the appropriation of the purchase-money paid for the same, and also in consideration of the premises, and of one dollar to them paid by the said party hereto of the third part, (the receipt whereof is hereby admitted,) have and each of them hath granted and conveyed, remised, released, and confirmed, and by these presents do, and each of them doth, grant and convey, remise, release, and confirm unto the said party hereto of the third part, his heirs and assigns forever, all that certain lot, piece, or parcel of ground, with the buildings thereon erected, situated, lying, and being on the westerly side of Elizabeth street, between Grand and Hester streets, in the Fourteenth ward of the city of New York, known and distinguished on a map of the late Nicholas Bayard's east farm, made by Casimer H. Goerck, surveyor, a copy of which is filed in the office of register in and for the city and county of New York, as lot number one hundred and ninety-nine, (No. 199,) bounded easterly in front *of* Elizabeth street; southerly by a lot distinguished on the said map as No. 198; westerly in the rear by a lot distinguished on the said map as No. 210; and
533 northerly by a lot distinguished on the said map as No. 200, the

said lot being in breadth in front and rear each twenty-five feet, and in depth on each side ninety-four feet, be the said dimensions more or less. And the said parties hereto of the first and second part, separately, each for himself and herself, and not jointly, one for the other, and for their respective heirs, executors, and administrators, do, and each of them doth, covenant, grant, and agree, to and with the said party hereto of the third part, his heirs and assigns, that they, the said parties hereto of the first and second part' respectively, their respective heirs, and all other persons deriving any legal or equitable estate, right, title, or interest in or two the said premises above granted and released from, under, or in trust for them, shall and will, at any time hereafter, at the request and at the proper costs and charges of the said party hereto of the third part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the above-granted and released premises in and to the
534 said party hereto of the third part, his heirs and assigns forever, as by him, them, or their counsel learned in the law shall be reasonably devised, advised, or required. And the said party hereto of the first part, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to, and with the said party hereto of the third part, his heirs and assigns, that he, the said party hereto of the first part, has not made, done, suffered, or committed any act, matter, or thing by means whereof the estate of the said party hereto of the third part, his heirs, or assigns, in the above-granted and released premises, or any part thereof, shall or may be charged, defeated, impeached, impaired, or incumbered.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

M'W ST. CLAIR CLARKE. [L. S.]
JEANET CLARKE. [L. S.]

Sealed and delivered in the presence of—
DUNBAR S. DYSON.

STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-first day of November, A. D. 1835, before me personally appeared Dunbar Dyson, the subscribing witness to the
535 above indenture, to me known, who, being by me duly sworn, did state that he resides in the city of New York, and that he knows Mat'hew St. Clair Clarke and Jeanet Clarke to be the same persons described in and who executed the above indenture, and severally acknowledged, in his presence, that they executed the same for the uses and purposes therein mentioned; all of which, being to me satisfactory evidence of the due execution of the above indenture, I do therefore allow it to be recorded.

D. P. RIKER,
Commissioner of Deeds.

Recorded the preceding, at the request of J. L. Riker, November 21st, 1835, at 33 min. p. 12 m.

W'M H. BUNN, *Reg.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the twenty-first day of November, A. D. 1835, at 12 o'clock, 33 min. p. m., in liber 343 of conveyances, page 352, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office. Dated this 30th day of April, 1863.

JOHN KEYSER, *Register.*

(Endorsed:) Mat'hew St. Clair Clarke and others. Dated October 14th, 1835. Confirmation of Jeanet Clarke's sale to W'm A. Coit, of June 15, 1835. Deed. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 21. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

536 To all to whom these presents come shall:

Whereas, in and by a certain indenture, bearing date the fifteenth day of November, eighteen hundred and twenty-nine, and recorded in liber 260 of conveyances, page 414, made between James Boorman and Matthew St. Clair Clarke, executors of James R. Smith, deceased, of the first part; James C. R. Smith, and Julia his wife, Jeanet Clarke, and Joseph Duncan, and Elizabeth, his wife, of the second part, and Robert Dyson of the third part, the said parties of the first and second parts did grant and convey unto the said party thereto of the third, among other property, two certain lots of ground by the following description, viz: A lot on Forsyth street, known in the plan of the city as No. 652, being twenty-five feet front and one hundred feet deep; lot No. 656, on Eldridge street, being the lot of the estate furthest from the corner of Stanton street in that square, being twenty-five feet front and one hundred feet deep, the said lots being part of the estate of James R. Smith deceased, and constituting a portion of the one-third part of the share of Anna R., (the wife of Mat'hew St. Clair Clarke,) one of the daughters and devisees of the said James R. Smith, which, under the will of her said father, was placed at her own disposal;

537 and whereas, by a certain other indenture, bearing date the same day and year, and recorded in liber 260 of conveyances, page 398, made between James Boorman and Mat'hew St. Clair Clarke, executors as aforesaid, of the first part; James C. R. Smith and Julia his wife, Mat'hew St. Clair Clarke, and Anna R., his wife, and Joseph Duncan and Elizabeth C., his wife, of the second part, and Jeanet Clarke, of the third part, the said parties of the first and second parts did convey (with other property) to the said party of the third part a certain lot of ground by the following description, viz., lot No. 655, in the plan of the city on Eldridge street, being a part of one-third part of the share of Jeanet Clarke, one of the daughters and devisees of James R. Smith, deceased, which, under the will of her said father, was placed at her disposal; and whereas the said two lots hereinbefore first mentioned were conveyed by the said Robert Dyson to Mat'hew St. Clair Clarke, and Anna R., his wife, by the same description as that contained in the said deed to the said Robert Dyson; and the said lot hereinbefore last mentioned was conveyed by the said Jeanet Clarke to the said Mat'hew St. Clair Clarke by the same description as that contained in the said deed to the said Jeanet Clarke; and whereas the

538 said lots have been inaccurately described in the several conveyances thereof in being called lots Nos. 652, 656, and 655, in a

plan of the city, instead of in a map or chart of the estate, late the property of James de Lancey, esq'r, made by Everet Buncker, commonly called the map of De Lancey's farm, in which said map the said lots are distinguished by the numbers aforesaid: Now, therefore, in order to cure such inaccuracy, we, the subscribers, respectively certify that the said lots intended to be conveyed by the said conveyances to the said Robert Dyson and Jeanet Clarke, and by them respectively to the said Mathew St. Clair Clarke, were, and were intended to be, the lots known as lots Nos. 652, 656, and 655, on the map or chart of the estate late the property of James De Lancey, esq., made by Evert Bancker, commonly called the map of de Lancey's farm.

Witness our hands and seals this first day of July, eighteen hundred and forty-one.

M'W S'T CLAIR CLARKE, *Ex'r.* [L. S.]
J. BOORMAN, *Ex'r.* [L. S.]
M'W S'T CLAIR CLARKE. [L. S.]
ANNA R. CLARKE. [L. S.]
ROBERT DYSON. [L. S.]
JOSEPH DUNCAN,
By his attorney, ROBERT DYSON. [L. S.]
ELIZABETH C. DUNCAN,
By her attorney, ROBERT DYSON. [L. S.]
JEANET CLARKE,
By her attorney, MATHEW S'T CLAIR CLARKE. [L. S.]

Signed, sealed, and delivered in presence of—
GEORGE HUMES.
SIMON BROWN.

539 DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, on this 9th day of July, 1841, before me, the subscriber, a commissioner in and for the district of Columbia, appointed by the governor of the State of New York to take the acknowledgements of proof of deeds and other writings under seal to be used or recorded in the said State of New York, appeared Mathew St. Clair Clarke, and Anna R. Clarke, his wife, both well known to me as the persons who executed the foregoing instrument of writing and severally acknowledged the same to be their free act and deed. And the said Mathew St. Clair Clarke did also acknowledge the said instrument to be the act and deed of Mrs. Jeanet Clarke, and that he executed the same as her attorney, and also as one of the executors of James R. Smith therein mentioned. And the said Anna R. Clarke, on a private examination apart from her husband, acknowledged that she executed the foregoing instrument freely, and without any fear or compulsion of her husband. And I further certify that I know the persons who made the said acknowledgement to be the individuals described in and who executed the said instrument.

Given under my hand and seal.

DAVID A. HALL, [L. S.]
Commissioner.

540 STATE OF NEW YORK,
City and County of New York, ss:

On the first day of July, 1841, before me, came James Boorman, to me personally known as one of the individuals described in and who

executed the within instrument, and also to me known to be one of the executors of James R. Smith, deceased, and acknowledged the execution of said instrument as such executor. And, on the nineteenth day of said month of July, before me, came Robert Dyson, to me known to be one of the persons described in and who executed such instrument, and also to me known to be the attorney of the within-named Joseph Duncan, and Elizabeth C., his wife, and said Dyson acknowledged the execution of said instrument for himself and as attorney as aforesaid.

BEVERLY ROBINSON, JR.,
Commissioner of Deeds.

Recorded the preceeding at the request of Samuel Hart, August 5th, 1841, at 10 a. m.

J. S. BROWNELL, *Register.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York:

I have compared the annexed copy with an instrument recorded in this office on the fifth day of August, 1841, at 10 o'clock a. m. in
541 liber 416 of conveyances, page 466, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office. Dated this 30th day of July, A. D. 1862.

JOHN KEYSER, *Register.*

(Endorsed:) James Boorman, &c., to Robert Dyson. 1st July, 1841. Recorded 5th August, 1841. Correction of description in deed of 15th Nov., 1829. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 22. Knox & Mason, sol's for def'ts. Filed Sept. 12, 1871.

542 This indenture, made the twenty-ninth day of December, one thousand eight hundred and forty-five, between Jeanet Clarke, of the city of Washington, widow of John X. Clarke, deceased, of the first part, and George C. De Kay, of the city of New York, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-four hundred dollars, lawful money of the United States, to her in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same, by these presents, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all those lots, peices, and parcels of land and premises situate, lying, and being on the northerly side of Twenty-sixth street, in the Sixteenth ward of the city of New York, being two of the parts of the estate of James R. Smith, late of the city of New York, deceased, which were allotted to the said Jeanet Clarke, party hereto of the first part, upon the division of a certain portion of the same among his heirs-at-law, and known upon a map made for
543 the said division by the numbers 2 (two) and 6, (six,) which said lot No. 2, upon the map made for the assessment of taxes in said ward, is subdivided by the centre line of the block between Twenty-sixth and Twenty-seventh streets, into two lots, known respectively by the ward numbers 2134, and 2365, and which lot No. 6, before men-

tioned, upon the said map made for the assessment of taxes in said ward, is likewise subdivided by said centre-line into other two lots known respectively by the ward numbers 2138 and 2361; and also a certain other peice or parcel of land on the southerly side of Twenty sixth street aforesaid, immediately opposite to lot No. 2, before mentioned, and contained between the parallels bounding the east and west sides of said lot No. 2, the said parallels being continued in a southerly direction, and containing in front, on Twenty-sixth street, twenty-four feet and ten and a half inches in depth; on the westerly side, twelve feet and eleven inches; and on the easterly side, twelve feet and four inches, being bounded in the rear by land now or lately belonging to the estate of Henry Eckford, deceased. And, also, a certain other peice or parcel of land on the said southerly side of Twenty-sixth street, immediately opposite to lot No. 6, before mentioned, and contained between the parallels bounding the east and west sides of said lot No. 6,
544 the said parallels being continued in a southwardly direction, and containing in front, on Twenty-sixth street, twenty-four feet ten and a half inches; in depth, on the westerly side, ten feet and seven inches; and on the easterly side, ten feet; and being likewise bounded in the rear by said land now or lately belonging to said Henry Eckford's estate, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said Jeanet Clarke, for herself, her heirs, executors, and administrators, doth hereby covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said party of the first part, at the sealing and delivering of these pres-
545 ents, is lawfully seized, in her own right, of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises, with the appurtenances, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid, and that the said party of the scond part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, her heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances, of what nature or kind soever; and also, that the said party of the first part, and her heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore-granted premises, by, from, under, or in trust for her or them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and
546 charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and

executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances, in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required; and the said Jeanet Clarke and her heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and her heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto interchangeably set their hand and seals the day and year first above written.

JEANET CLARKE. [L. S.]

Sealed and delivered in presence of—
W. CRANCH.
M'W S'T CLAIR CLARKE.

547 DISTRICT OF COLUMBIA,
Washington County, to wit:

Be it remembered that on this eleventh day of May, anno Domini one thousand eight hundred and forty-six, before me, William Cranch, chief judge of the circuit court of the United States in and for said district, personally appeared Jeanet Clarke, to me personally known, as grantor in the aforegoing indenture, and did acknowledge that she did sign, seal, and, as her act and deed, deliver the same, for the purposes therein contained.

W. CRANCH.

Recorded the preceeding, at the request of P. W. Turney, August 28th, 1846, at 55 min. past 1 p. m.

SAMUEL OSGOOD, *Reg.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 28th day of August, A. D. 1846, at 1 o'clock 55 minutes p. m., in liber 479 of conveyances, page 635, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 29th day of April, 1863.

JOHN KEYSER, *Register.*

(Endorsed:) Jeanet Clarke to G. C. DeKay. Dated December 29, 1845. U. S. circuit court. Clarke vs. executors of Boorman. Exhibit No. 23. Knox & Mason, Sol'r for def'ts. Deed. Filed Sept. 12, 1871.

548 *Bond of indemnity.—M. St. Clair Clarke, J. C. R. Smith, Jeanet Clarke, and Joseph Duncan, to James Boorman.*

To all to whom these presents shall come, Mathew Saint Clair Clarke, of Washington, in the District of Columbia; Joseph Duncan, of the State of Illinois, Jeanet Clarke, of Greencastle, in the State of Pennsylvania, and James C. R. Smith, of Newark, in the State of New Jersey, send greeting:

Whereas James R. Smith, late of the city of New York, merchant, deceased, the father of the above-named Jeanet Clarke and James C. R. Smith, and also of Anna R. Clarke, the wife of the above-named Mathew Saint Claire Clarke, and of Elizabeth C. Duncan, the wife of the above-named Joseph Duncan, did, in and by his last will and testament, bearing date the twenty-third day of January, in the year of our Lord one thousand eight hundred and seventeen, and executed in such manner as was by law required to pass real estate, (among other provisions therein contained,) authorize his executors therein named and appointed, and the survivors and survivor of them, or such other person or persons as might lawfully obtain the right to execute his said will, in their discretion, to sell in fee-simple or otherwise, according to the nature of the estate he might hold at the time of his decease, at public auction or private sale, the whole or any part of his said estate, real or personal, and to execute and deliver good and sufficient
549 deeds or conveyances in the law for the same to the purchaser or purchasers thereof, his or their heirs and assigns forever, and did nominate, constitute, and appoint Andrew Foster, John Thompson, James Boorman, Hannah Smith, (then the wife of the testator,) and the above-named Mathew Saint Clair Clarke, executors of his said will.

And whereas the said James R. Smith did afterwards make a codicil to his said will, bearing date the thirtieth day of May, in the year of our Lord one thousand eight hundred and seventeen, and also executed in such manner as was by law required to pass real estate, whereby, after various specific devises, bequests, and directions, he gave, devised, and bequeathed unto his said executors all the rest, residue, and remainder of his estate, of every kind and nature whatsoever, and wheresoever situate, in trust, that the same should be equally divided to and amongst his four children, share and share alike, and to their respective heirs; directing, however, that his son, the above-named James C. R. Smith, should not come to the full possession and enjoyment of his portion of such estate until he should arrive at the age of twenty-five years; and further directing that his daughters, the above-named Jeanet, Anna, (in the said codicil named Hannah,) and Elizabeth, if she should arrive at the age of twenty-one years, should have the privilege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of his estate therein devised to them, in such manner as they might think proper, and over which, when so appropriated, they should have absolute control; and as to the remaining two-thirds parts thereof, directing and disposing as follows, that is to say: "And the remaining two-thirds of the portions or shares of my daughters shall be held separate and distinct, and not liable to the control, debts, or engagements of either of their husbands, which they now have, or may hereafter have, as well those who are married, as she who may hereafter marry, giving, however, to the husband of either, or all of them, in case the wife shall die first, either with or without issue, the income of said reserved part of my estate as long as he shall live arising from his wife's portion, and, after his death, then to the child or

executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances, in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required; and the said Jeanet Clarke and her heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and her heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the parties to these presents have hereunto interchangeably set their hand and seals the day and year first above written.

JEANET CLARKE. [L. S.]

Sealed and delivered in presence of—
W. CRANCH.
M'W S'T CLAIR CLARKE.

547 DISTRICT OF COLUMBIA,
Washington County, to wit:

Be it remembered that on this eleventh day of May, anno Domini one thousand eight hundred and forty-six, before me, William Cranch, chief judge of the circuit court of the United States in and for said district, personally appeared Jeanet Clarke, to me personally known, as grantor in the aforegoing indenture, and did acknowledge that she did sign, seal, and, as her act and deed, deliver the same, for the purposes therein contained.

W. CRANCH.

Recorded the preceeding, at the request of P. W. Turney, August 28th, 1846, at 55 min. past 1 p. m.

SAMUEL OSGOOD, *Reg.*

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 28th day of August, A. D. 1846, at 1 o'clock 55 minutes p. m., in liber 479 of conveyances, page 635, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

Dated this 29th day of April, 1863.

JOHN KEYSER, *Register.*

(Endorsed:) Jeanet Clarke to G. C. DeKay. Dated December 29, 1845. U. S. circuit court. Clarke vs. executors of Boorman. Exhibit No. 23. Knox & Mason, Sol'r for def'ts. Deed. Filed Sept. 12, 1871.

548 *Bond of indemnity.—M. St. Clair Clarke, J. C. R. Smith, Jeanet Clarke, and Joseph Duncan, to James Boorman.*

To all to whom these presents shall come, Mathew Saint Clair Clarke, of Washington, in the District of Columbia; Joseph Duncan, of the State of Illinois, Jeanet Clarke, of Greencastle, in the State of Pennsylvania, and James C. R. Smith, of Newark, in the State of New Jersey, send greeting:

Whereas James R. Smith, late of the city of New York, merchant, deceased, the father of the above-named Jeanet Clarke and James C. R. Smith, and also of Anna R. Clarke, the wife of the above-named Mathew Saint Claire Clarke, and of Elizabeth C. Duncan, the wife of the above-named Joseph Duncan, did, in and by his last will and testament, bearing date the twenty-third day of January, in the year of our Lord one thousand eight hundred and seventeen, and executed in such manner as was by law required to pass real estate, (among other provisions therein contained,) authorize his executors therein named and appointed, and the survivors and survivor of them, or such other person or persons as might lawfully obtain the right to execute his said will, in their discretion, to sell in fee-simple or otherwise, according to the nature of the estate he might hold at the time of his decease, at public auction or private sale, the whole or any part of his said estate, real or personal, and to execute and deliver good and sufficient
549 deeds or conveyances in the law for the same to the purchaser or purchasers thereof, his or their heirs and assigns forever, and did nominate, constitute, and appoint Andrew Foster, John Thompson, James Boorman, Hannah Smith, (then the wife of the testator,) and the above-named Mathew Saint Clair Clarke, executors of his said will.

And whereas the said James R. Smith did afterwards make a codicil to his said will, bearing date the thirtieth day of May, in the year of our Lord one thousand eight hundred and seventeen, and also executed in such manner as was by law required to pass real estate, whereby, after various specific devises, bequests, and directions, he gave, devised, and bequeathed unto his said executors all the rest, residue, and remainder of his estate, of every kind and nature whatsoever, and wheresoever situate, in trust, that the same should be equally divided to and amongst his four children, share and share alike, and to their respective heirs; directing, however, that his son, the above-named James C. R. Smith, should not come to the full possession and enjoyment of his portion of such estate until he should arrive at the age of twenty-five years; and further directing that his daughters, the above-named Jeanet, Anna, (in the said codicil named Hannah,) and Elizabeth, if she should arrive at the age of twenty-one years, should have the privilege of expending and appropriating, by and with the consent of the executors, one-third part of their portion of his estate therein devised to them, in such manner as they might think proper, and over which, when so appropriated, they should have absolute control; and as to the remaining two-thirds parts thereof, directing and disposing as follows, that is to say: "And the remaining two-thirds of the portions or shares of my daughters shall be held separate and distinct, and not liable to the control, debts, or engagements of either of their husbands, which they now have, or may hereafter have, as well those who are married, as she who may hereafter marry, giving, however, to the husband of either, or all of them, in case the wife shall die first, either with or without issue, the income of said reserved part of my estate as long as he shall live arising from his wife's portion, and, after his death, then to the child or

children of my said daughter so dying; and if either of my
550 daughters shall die without lawful issue, or having issue which shall not attain the age of twenty-one years and without issue, then the share or portion of my said daughter, after the death of her husband, or if there be no husband living at her death, shall go and be divided among my other children, share and share alike, and to their issue, in case of the death of either of them, share and share alike, such issue to take the portion that would have belonged to his, her, or their father or mother;" and which said codicil also contained (among other things) a clause or declaration of the tenor or to the effect following, that is to say: "That my said executors, their respective heirs, executors, and administrators, shall be charged and chargeable only, every of them, for and with his or her own respective receipts and payments, acts and willful defaults, and not otherwise, and shall not be charged or chargeable with or for any sum or sums of money other than such as shall actually and respectively come to his, her, or their hands by virtue of this my will, nor with or for any loss or damages which may happen in or about the execution of all or any of the trusts hereby in them reposed, without his, her, or their respective willful default"—as by the said last will and testament, and the said codicil respectively, or the record thereof in the office of the surrogate of the county of New York, in the State of New York, reference being thereunto had, may among things more fully and at large appear;

And whereas, the said James R. Smith, the testator, having afterwards departed this life without altering or revoking his last will and testament, or the said codicil thereto, and leaving the same respectively in full fore and effect; the same were duly proved before the surrogate of the said county of New York, and thereupon letters testamentary were by him in due form of law granted to the said John Thompson, James Boorman, Hannah Smith, and Mathew Saint Clair Clarke, four of the executors therein named, who respectively assented thereto, and took upon themselves the burthen of the execution thereof, the said Andrew Foster refusing such assent on his part, and renouncing his appointment as such executor;

And whereas the said John Thompson and Hannah Smith, (who was subsequently intermarried with John R. B. Rodgers, of the city
551 of New York,) have since the time of such probate severally departed this life, leaving the said James Boorman and Mathew Saint Clair Clarke the only surviving executors of the said will; and the said James C. R. Smith hath some time since attained the age of twenty-five years, and the said Elizabeth C. Duncan the age of twenty-one years;

And whereas, on a settlement of all accounts and concerns between the estate of the said James R. Smith, deceased, and that of the said Hannah Rodgers, deceased, (late Hannah Smith, the widow of the testator,) made by and between all the parties in interest, both the said estates being represented by the same individuals as beneficially interested in them respectively, a balance of fourteen thousand six hundred and fifty-two dollars and twenty-two cents was found to be due and owing from the former estate to the latter, which balance, as all the personal estate of the said James R. Smith had been exhausted, and in the opinion of all the parties concerned, it would have been injurious to their interests to raise the requisite funds from the sale of real estate, the said parties respectively agreed to satisfy and discharge, by a distribution and conveyance to them respectively of certain parts and parcels of such real estate, (equal in value to their respective shares or por-

tions of the said balance,) mutually selected and designated by them for that purpose, and thereupon, in pursuance of such agreement, deeds, or conveyances in fee, bearing date the fifteenth day of November, now last past, were executed by the said James Boorman and Mathew Saint Clair Clarke, surviving executors as aforesaid, to the said Joseph Duncan and Elizabeth C. his wife, Jeanet Clarke and James C. R. Smith respectively, for their several and respective parts and parcels of such real estate selected and designated for that purpose as aforesaid; and in respect to the parts and parcels of such estate so selected and designated as aforesaid, for the said Mathew Saint Clair Clarke and Anna R. his wife, in right of the said Anna, a like deed or conveyance bearing the same date, was in pursuance of their request, at the same time executed by the said surviving executors to Robert Dyson, of the city of New York, who thereupon forthwith conveyed the same prem-
552 ises over to the said Mathew Saint Clair Clarke and Anna his wife, in fee, as by the said deeds or conveyances respectively, or the records thereof in the office of the register in and for the city and county of New York, reference being thereunto had, may more fully and at large appear;

And whereas, also, for the purpose of executing and satisfying in regard to the said James C. R. Smith, the trust contained in the said residuary devise above recited or referred to, the said surviving executors, at the request and with the approbation of all the parties in interest, did, at the same time, and in and by the same deed or conveyance above mentioned, grant and convey to the said James C. R. Smith, in fee, (he having before that time attained the age of twenty-five years,) certain other parts and parcels of the real estate of the said testator, being equal in value, as estimated and admitted by all the said parties, to one equal fourth part or share of the whole residuary estate of the said testator, after deducting certain advances theretofore made on account thereof to him, the said James, and which deed or conveyance was accepted and received by the said James in full satisfaction and discharge of the said trust in regard to him, and of all claims and demands by him upon the said executors, and upon or in respect of the said estate, or any person or persons representing the same;

And whereas, also, for the purpose of executing and satisfying the trust contained in the said residuary devise, so far forth as the same relates to one-third part of the respective portions of the daughters of the said testator, over which, when appropriated, as in the said devise was contemplated, they were, according to the said devise, to have the absolute control, the said Elizabeth having arrived at the age of twenty-one years, and she, together with her husband, and the said Anna R. Clarke, together with her husband, and the said Jeanet Clarke, having respectively, with the consent of the said executors, appropriated one-third part of their and each of their said respective portions, and having mutually agreed with each other on a division and distribution among them of the said third part of such portions respectively, the said James Boorman and Mathew Saint Clair Clarke, surviving executors as aforesaid, in pursuance of such agreement, did, in and by certain other
553 deeds or conveyances bearing date the said fifteenth day of November last, grant and convey to the said Jeanet Clarke, and the said Joseph Duncan, and Elizabeth C., his wife, respectively, in fee, their several and respective one-third parts of the said portions so appropriated and agreed to be divided as aforesaid; and in respect to the said one-third part of the portion so appropriated and agreed to be divided as aforesaid to the said Mathew Saint Clair Clarke and Anna

R., his wife, in right of the said Anna, did, by a like deed or conveyance, bearing the same date, grant and convey the same at their request, in fee, to the said Robert Dyson, who thereupon forthwith granted and conveyed the same over to the said Mathew Saint Clair Clarke and Anna R., his wife, in fee, as by the said deeds or conveyances respectively, or the records thereof in the said register's office, reference being thereunto had, may also more fully and at large appear;

And whereas, also, the said James Boorman and Mathew Saint Clair Clarke, surviving executors, as aforesaid, under and by virtue of the power for that purpose contained in the said last will and testament, and by and with the advice and approbation, and at the request of all the parties interested or concerned therein, did afterwards, by a certain deed or indenture bearing date the twenty-sixth day of December now last past, for the consideration of sixty-four thousand seven hundred and ten dollars and fifty-nine cents to the said Mathew Saint Clair Clarke in hand paid, and the receipt whereof was by him thereby acknowledged, grant, bargain, and sell, remise, release, enfeoff, and confirm unto the said Robert Dyson, his heirs and assigns, all and singular the remaining two-third parts of the portions or shares of the daughters of the said testator, comprehending all the rest, residue, and remainder of his real estate, and in the said deed or indenture particularly mentioned and described, as in and by the said deed or indenture, or the record thereof, when the same shall be recorded, reference being thereunto had, may also more fully and at large appear;

And whereas no part or portion of the consideration money or price for which the said last-mentioned premises were sold and con-
554 veyed, as aforesaid, to the said Robert Dyson, hath been received by, or come into the hands or under the control of, the said James Boorman, but the same, and every part thereof, hath, by and with the consent and approbation of all the parties interested or concerned, gone exclusively into the hands or under the control of the said Mathew Saint Clair Clarke, who alone is to be charged or held chargeable therewith;

And whereas the said James Boorman hath fully accounted for and paid over for the use of the estate of the said testator, or of those interested therein, all moneys, goods, chattels, and effects which have come to his hands, or under his power or control, and hath fully and satisfactorily to all concerned, performed, accounted for, and discharged himself of all and singular the trusts reposed in him as executor, trusts or otherwise, in and by the said will and testament, and the said codicil, or in any other way or manner relating to or concerning the estate, both real and personal, of the said testator:

Now, therefore, these presents witness that the said Mathew Saint Clair Clarke and Joseph Duncan, as well for themselves as their respective wives, and the heirs, executors, administrators, and assigns of the said wives, respectively, and the said Jeanet Clarke and James C. R. Smith, each for himself and herself, and their respective heirs, executors, administrators, and assigns, in consideration of the premises, and for and in consideration also of the sum of one dollar, lawful money of the United States, to them respectively in hand paid, by the said James Boorman, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have, and each of them hath, released, exonerated, and discharged, and by these presents do, and each of them doth, fully and absolutely release, exonerate and discharge him, the said James Boorman, his heirs, executors, and administrators, of and from all sum and sums of money by him, the said James Boorman, had or received, or which he might or could, by any ways or means

whatsoever, have collected, had, or received, in pursuance of the said will and testament, or any of the trusts or powers therein, or in the said codicil, contained, or by means of his being an executor of the will and testament of the said James R. Smith, deceased, and of and from
555 all reckonings and accounts, or liability to account, for or concerning the same, or any part thereof, and also of and from all other reckonings, accounts, claims, and demands whatsoever, for, on account of, or in any way or manner relating to or concerning the estate of the said James R. Smith, deceased, whether real or personal, or any trust, confidence, or power relating thereto, or to any part, share, or portion thereof; and do, and each of them doth, hereby jointly and severally covenant and agree to and with the said James Boorman, his heirs, executors, and administrators, to save harmless and indemnify him and them, and his and their lands, chattels, and estates, of and from all losses, damages, suits, actions, costs, charges, expenses, claims, and demands whatsoever, for, by reason or on account of his having made or executed, or joined in the making or execution of, the several deeds, indentures, or conveyances hereinbefore mentioned or referred to, or any or either of them, or for, by reason or on account of any other act, matter, or thing by him done, committed, or suffered, touching or concerning the estate, real or personal, of the said James R. Smith, deceased, or any part, share, or portion thereof, whether under and by virtue of the powers and trusts in the said last will and testament and the said codicil contained, or any of them, or otherwise howsoever.

In witness whereof the said Mathew Saint Clair Clarke, Joseph Duncan, Jeanet Clarke, and James C. R. Smith have hereunto set their hands and seals the tenth day of July, in the year of our Lord one thousand eight hundred and thirty.

M'W S'T CLAIR CLARKE. [L. S.]
J. C. R. SMITH. [L. S.]
JEANET CLARKE. [L. S.]
JOSEPH DUNCAN. [L. S.]

Sealed and delivered in the presence of—
NOAH FLETCHER, as to M'w S't Clair Clarke and Jeanet Clarke.
J. M. DUNCAN, as to Joseph Duncan.
CHA'S H. HALSEY, as to J. C. R. Smith.

556 *Letters.*

DEAR SIR: I now inclose you a paper showing certain facts. Mr. Coxe I could not see before this evening, and on the paper, I mention in a few words from him, the nature of our attachment law.

Inclosed I send the first part of the description for the large deed from executors and heirs, to R. Dyson, for $\frac{2}{3}$ds of each of the daughters' share.

This constitutes the share of myself and wife, and may be put in first; the second I shall finish to-morrow, and probably the third. Please send this to Mr. Wilson, that he may go on so far.

Your obedient servant,

M'W S'T CLAIR CLARKE.

WASHINGTON, 9 *Nov.*, 1829.

I presume Mr. Dyson called on you.

DEAR SIR: Three or four days ago Mr. Ludlow called on me with your letter to him, accompanying the first bundle of deeds. I took

them as he requested, for examination, in order, then to write Mr. Boorman as you wished. But last evening on taking them up, (and it was the first moment I could command,) I found that one of them was not in the bundle—the one that was to be executed to James for his ¼ of the debt due to his mother's estate. This morning I saw Mr. Ludlow again, and inquired whether it might not have got separated from the rest in his office. But learning that it has not, I can only suppose that in the hurry of endorsing them, you have accidentally omitted it. Be so good as to see—and if it is so, inclose it to me or Mr. Ludlow by return of mail. I received yesterday your letter of the 7th, and to-day Mr. Ludlow handed me your last inclosure to him—the great deed. I will go through with the examination without delay, and hand them back for execution by Mr. B.

557 Meantime, and as soon as possible, send on the one above inquired for.

I have done nothing about the release, &c., to Mr. Boorman, because I had nothing in my hands (neither drafts nor engrossments) from which I could prepare it. But now I have, and I will do it.

Yours, truly,

P. W. RADCLIFF.

M'W S'T CLAIR CLARKE, Esq.

NEW YORK, *Jan'y* 12, 1830.

BROOKLYN, *Tuesday evening, March* 9, 1830.

DEAR SIR: To relieve your mind at the outset, I start with saying that I have at last completed the examination of the deeds. It was done on Saturday night, and yesterday such of them as were ready for immediate execution (that is, all except those relating to the last two-thirds of the daughters' shares) were handed to Mr. Boorman for that purpose. He was to call on Mr. Ludlow this morning, and execute and acknowledge them before him, and I presume it has been done accordingly. Having said this much, allow me now to stop and trouble you with a little explanation. It was not from want of attention, nor from indifference to your wishes, that this was not done long before. It was again and again attempted, partially completed, broken off by occurrences that I could not control, and then begun again, and again broken off as before. You, who had the business familiarized to your mind, could take it up anywhere in any part, and understand it as well piecemeal as in connection. I could not; and once entering that wilderness of deeds, if I did not, before I lost my compass, get safely through it, I was glad to get out anywhere and start anew, as upon a fresh enterprise, when I could again get ready to undertake it. My office, I know, was not that of counsel for the parties, in relation to the details of their arrangement; but I was expected by Mr. Boorman to be able to

558 say to him that the outline was right, and that it would be safe for him to take, not upon himself merely, but upon his heirs, &c., after his death, the burthen of vindicating and explaining the part he bore in carrying the arrangements into effect. For that purpose examination was necessary and such an undertaking of it, at least, as would enable me to make that report to him; and t. is, with the embarrassments I have referred to, and the almost incessant pressure of engagements which I could not avoid, it was not in my power to accomplish until now. If, in the progress of my examination, I had noticed anything wrong, either in principle or detail, I should, of course, have stated it because not only Mr. Boorman, but all concerned, would have wished

to see the error corrected. In regard to detail, however, I did not consider myself as charged with the duty of particular inquiry. That was better understood by the parties themselves than I could understand it by any examination in my power. The only inquiries that suggest themselves—and those are put merely to bring them to your own notice for consideration—relate to yourself and James. With regard to the latter, you say, in your letter of the 23d Jan'y, that his fourth of the debt to Mrs. Rodgers' estate is included in his single deed. I have no doubt it is so, because you, who understand it, say it is; but as it does not appear on the face of the conveyance, and as the consideration expressed does not seem to indicate it, I call your attention to it, merely that you may yourself be sure it is as you intend. Perhaps the state of his accounts with his father's estate may give the explanation. And with regard to yourself, the consideration in the deed to Mrs. Jeanet Clark (for her third of ¼) is $10,786.46, and in that to Gen'l Duncan and his wife, $10,761.45, while in the deed to you and Mrs. Clarke it is but $8,948.68. Are you sure there is no mistake? With respect to the description of the property and the like, it was neither intended that I should examine into it, nor (if it had been intended) would it have been in my power to make any correction, for want of materials. But if I had, we should most assuredly have been at odds upon the point on which I have heretofore mentioned that we differed so widely—that is, upon the article of precision and definiteness in locating and de-
559 scribing the premises conveyed. It is an article upon which I am aware that I lay more stress than many other lawyers, owing, perhaps, in some measure, to difficulties having come under my observation which more care and particularity would have prevented, and which led me at an early period to resolve that no such difficulty should arise from deeds of my drawing. That, however, was entirely for your consideration, not mine, and you will not consider me as finding fault about it. But still excuse me for suggesting one or two things which struck my eye in glancing over the papers. In some of the deeds you refer for designation of parcels of the John Kerr lot to the map of George B. Smith, but where is it, or how identified? And if not identified, how does it help out in point of description? I would strongly recommend to you to send it on, with a declaration endorsed upon it by all of you that it is the map referred to in these deeds, and to file it in the register's office here, where the deeds will be recorded; and for that purpose to date the endorsement contemporaneously with the deeds. And the same remarks and recommendation are alike applicable to the articles of agreement between you (of Oct. last) for the division of the estate and the valuation set upon it by Messrs. Boorman, Suffern, and Dyson. I would send on a copy of that, also, authenticated like the map; and if that is in such a form as to admit of recording it, I would have it acknowledged like a deed, and put upon record. One thing more is not only advisable, but indispensable, as it enters into the titles of all the other parties. Mrs. Jeanet Clarke acts throughout by you as her attorney. Your power, therefore, (which, if I remember right, was acknowledged before you came here,) ought, undoubtedly, to be recorded, together with the deeds. If you will send it on to me for that purpose, I will see that it is done, and returned to you afterwards. Since I commenced this letter I have seen Mr. Ludlow, who has taken the signature and acknowledgment of Mr. Boorman to all the deeds except the last, which you denominate the great one. To that the signatures of James and his wife are yet wanting. They are to be here on Tuesday or Wednesday next, when it will be completed, both by them and Mr. Boorman, and remain

in his hands, or rather in mine, if you please, (so as to put it
560 in escrow, and guard against the contingency of death before its delivery,) until the last of the papers are finally prepared and interchanged between you. To that, however, I cannot sit down, till I have a little time to extricate myself from the snarl in which I have been entangled for several months, and which, I confidently trust, is now within a few days of being fairly unraveled. But that need not delay the completion of all or any part of the rest. I see no objection against putting all the deeds now in Mr. Ludlow's hands upon record, (that is, all except the great one, for the $\frac{2}{3}$ of $\frac{3}{4}$, and the corresponding deeds back from Mr. Dyson,) and then you and the general may at once go on and convey at pleasure. If you and he say so, I will have it done accordingly, as soon as I hear from you, and with your leave I will hand them to the register myself, and dictate the order in which he shall record them, with a view to perspicuity in the examination of them by strangers when they may have occasion to look into the title. In the last three deeds to be executed by Mr. Dyson you intend, I presume, to have them operate like the corresponding ones of the former class; so, indeed, it appears, from the habendum clause, as you have drawn it. But, as it is expressed, a question would arise whether the terms employed in it are not repugnant, (ex. gr., to you and your wife, "their heirs and assigns forever, to the only proper use, &c., of them, to her and her heirs and assigns forever;") and if so, the intention might be defeated, or, from the ambiguity, a slur be thrown upon the title. I will therefore alter them (with your and the general's consent) so as to read habendum, "to them, the said (M. St. C. C. and A. R. C.) parties of the second part, and the heirs and assigns of her, the said A. R. C., to their own proper use, benefit and behoof forever," and the like (mutatis mutandis) in the case of the gen. and his wife; the words "to their own proper use," &c., applying, distributively, to yourself and Mrs. Clarke, and to her heirs, &c., according to the existing interest at any given period or state of circumstances. This, too, will correspond in substance, and I think in terms, with the corresponding deeds already executed and in the hands of Mr. Ludlow. This, I believe, is all that
need be said at present in relation to the deeds, &c., now in course
561 of completion. One or two other things, on other subjects, and I have done. You request me, in your last, to send on to you "the tax-list vouchers." Which do you mean—those relating to the taxes last paid, or to the whole, from the beginning of my accounts, and those (only) that relate to taxes paid into the treasury; or those also which I paid here in the course of my agency. Please to designate, as far as may be necessary, and I will send on accordingly. There will be abundance of time, as the tax sales are postponed, and as Mr. Gorman is not likely to leave Albany soon. You have several times spoken of having the will of Mr. Smith proved and recorded in our supreme court, so as to be evidence of itself in all the courts of this State; and considering the value of the property held under it, and the number of counties in which it is situated, nothing can be more certain than that it ought to be done. Already two of the witnesses are dead, and in the natural course of things others must soon follow, and the will and codicil are so connected that one of them cannot be proved without the other. You was to examine your papers, and search for the original, which, I presume, must be there. I have it not, and I do not remember that I ever saw it. Mr. Boorman says he hasn't it; and I have searched thoroughly at the surrogate's office, and it is not there. Will you look for it, and send it to me if you can find it? The next term of our

supreme court will soon be here—the first Monday of May—and a good deal of preparation (the service of notices, &c., on all concerned, at least fifteen days before term) will be necessary, so that no time remains to be lost, or it will go over for another year before another opportunity will offer to make the proof, &c., without sending witnesses to Albany or Utica for the purpose. To save me the necessity of repetition in writing to Gen'l Duncan, I will take the liberty to refer him to this letter. Be so good as to show it to him. You see I have been obliged (from being day and night in court since I began) to write as I could, and sometimes to avail myself of the assistance of another hand. I trust, however, that it will be all intelligible, and that you will find time to give it a careful perusal.

Yours truly,

P. W. RADCLIFF.

M'w St. Clair Clarke, Esq.

562 BROOKLYN, *Friday evening, March* 26, 1830.

DEAR SIR: Brevity is said to be "the soul of wit." It certainly is one of the highest excellencies of letter-writing, and you have it in perfection. Whether it is entitled or not to the same commendation in matters of description, (in conveyancing,) seems to admit of different opinions. My own is against it. But I hope yours may prove the sounder of the two. Your laconic note in answer to my long "Indian path letter" was received to-day.

Agreeably to your request, I inclose you the deed from R. Dyson to yourself and Mrs. Clarke for her third of ⅛th, upon which you wish to make some endorsement before it is recorded. Be so good as to return it without delay, as everything, including Gen. Duncan's conveyance to Rowland, will have to remain until it comes back. Another thing, my good sir, and that (as mentioned in my former letter) is "indispensable, as it enters into the titles of all the other parties. Mrs. Jeanet Clarke acts, throughout, by you as her attorney. Your power, therefore, (which, if I remember right, was acknowledged before you came here,) ought undoubtedly to be recorded, together with the deeds. If you will send it on to me for that purpose, I will see that it is done and returned to you afterwards," (see my "Indian path letter,") in connection with your own reflections, if you have time to devote any to it.

At the same time, if you and the general and James say so, "indispensable" as the recording of this power appears to me, be it so. I will hand in the deeds, &c., and have them recorded without. But, according to my old-fashioned notions, the substratum should first be arranged, and then the superstructure. Indeed, if you will excuse me the suggestion, I think it may not be amiss while writing me (or before, if you have not already done it,) to read that said "Indian path letter," and reply to here and there a part of it which as yet appears to have been entirely overlooked. Brevity, I repeat, is the soul of wit, and the very highest attainment (save one, perspicuity,) in letter-writing; but to be brief, implies that something has been said. Be so good as to look again and say me something.

563 The original will is certainly not in the surrogate's office, unless they have hid it there, which I do not suspect. If it ever came into my possession, it must have been in some such way—hidden or wrapped up in other papers I will go over the whole mass, and know, too, with certainty. [By the way, what am I to do with that mass of papers? Shall I hand them over to Mr. Dyson, or send them to

you by mail, or what shall be done with them? Mem. This inquiry to be answered, but at your convenience.] The tax receipts will be searched for at the same time and sent to you.

P. S. *March 29th.*—(Making another "Indian path.") I have sickness at home, and I am resigning my office and winding up its concerns and the like, in consequence of which I could not come over on Saturday. I have to-day called on Mr. Dyson and seen George B. Smith's map of the John Kerr property, and the memorandum of the division of it, signed by yourself, Gen. Duncan and J. C. R. Smith. Shall I attach the latter to the former, and file them in the register's office at the same time that I hand the deeds to be recorded? It will tend "to help out description," which, as aforessid, I think not a little desirable. As you say, however, so I shall be. Perhaps, in even making the suggestion, I am going beyond my tether. But you will accept it or not, as you think best.

Yours truly,

P. W. RADCLIFF.

MW. ST. C. CLARKE, Esq.

P. S. Again.—You do not say whether or not you wish the present deeds (the nine) to be recorded at once, as I suggested. Gen'l D. expressed his wish to that effect, and I should probably have inferred yours also had it not been for your not sending on the power, without which, (as before mentioned,) none of them ought to be handed in for record. A word in answer if you please—brief as you please—but a word.

P. W. R.

P. S. Once more.—Mr. Ludlow has endorsed his certificates of acknowledgment upon all the nine, and so I promised to inform you, to save him the trouble of writing, and you of reading another letter.

P. W. R.
F. I. N. I. S.

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NEW YORK, 21*st April*, 1830.

MY DEAR SIR: Yours of the 15th was received, but respecting its inclosure, I know of no remedy but by the property being held in trust, and that is a thing you ought weigh well before you act, although I approve of your determination. I have not seen Mr. Radcliff yet, but I presume the deeds are all on record already. I never possessed one of them for a moment, having merely conveyed by my name and acknowledgement. I think I will get Carr's house removed unto No. 16 and fixed, for about $375. Wrote you on the 13th, to send me your note in my favor for $950, at 90 days' date—part renewal of the acceptance I had yesterday for $1,011. The remittance from George of $100 to cover the d'ft I paid on the 5th inst., is at your credit. Please send me the note, if you have not already done so.

The warm weather enfeebles me very much.

Yours truly,

R. DYSON.

M. S'T C. CLARKE, Esq.

NEW YORK, *June* 24, 1830.

DEAR SIR: General Duncan will explain to you, and account for all my delinquencies, and thus I am saved the necessity of doing it myself. In talking with him this morning, and considering in what manner the mortgages (intended to be executed between you and the other

members of the family,) are to be connected with Mr. Boorman, and form a part of the arrangement with him, it occurred to me that he had nothing to do with that part of the business. He had not suggested it as any part of the security on which he was to rely. I had not suggested it on his behalf. But it arose from consultations between yourself and the general, and was intended merely to provide a security, as between the members of the family themselves, for the rights of those who were intended by the will to succeed to a portion of the estate if there should be a failure of issue from those to whom it was in the first instance devised. In this view of it, both the general and my-
565 self thought that Mr. B. had no concern in it, and that there would appear a degree of incongruity in connecting him with it. On conferring with Mr. Boorman about it since, he thinks with us; and so viewing it, we conclude to leave all that part of the business to be arranged between yourselves, and the papers to be drawn by you accordingly. You therefore will determine between yourselves upon the several parts of the two-thirds, which each of you, (that is, each of the daughters, with their surviving husbands,) are to mortgage, and also upon the terms and conditions to be inserted in the mortgages. To enable you to draw them with reference to the will, I inclose you a copy of that part of it (or of the codicil) which relates to the two-thirds. As James and his children are alike interested in the limitation referred to, in regard to the shares of his sisters, (though his own is free from any *lim*itation upon it,) the mortgages will, of course, be taken in his favor, a s well as in favor of the other parties—that is, one from Gen'l Duncanand his wife, in favor of yourself and Mrs. Clarke, Mrs. Jeanet Clarke, and James; one from Mrs. Jeanet Clarke, in favor of yourself and Mrs. Clarke, Gen. Duncan, and his wife, and James, and the other from yourself and Mrs. Clarke, in favor of Mrs. Jeanet Clarke, Gen'l Duncan, and his wife, and James. I say one, in each case, because it may be so drawn as to inure to the benefit of the three to whom it is given, without drawing three separate ones from each party in favor of the three mortgages individually, which would render nine necessary. I have already delivered to James his deed for his fourth of the estate—including both his share of the debt due to his mother's estate, and his fourth of the residue of his father's estate. I now deliver to General Duncan the two deeds to him and his wife for their proportion of the same debt, and their third of the remainder, over which they were to have absolute control; and I hand to him, to be delivered to you, the two corresponding deeds to Mrs. Jeanet Clarke, and the power of attorney under which you act for her, and also the two corresponding deeds to yourself and your wife, together with the two deeds, to Mr. Dyson, with which they are connected. All that remains relates to the two-thirds of the daughters' share. I am to prepare and send on
566 to you the release and covenant to Mr. Boorman to be executed by yourself, Gen'l Duncan, Mrs. Jeanet Clarke, and James C. R. Smith; as soon as you have executed it, you will re-inclose it to me for Mr. Boorman; and if you will, at the same time, drop a line to James, requesting him to come over here and execute it on his part, it will hasten so much the completion of the arrangement. As soon as that is done, I shall hand it over to Mr. Boorman, and at the same time deliver the remaining deeds to the register, to be recorded; that is, the deed for the two-thirds to Mr. Dyson, and his three deeds to Mrs. Clarke and yourself, to Mrs. Jeanet Clarke, and to Gen. Duncan and his wife, for their respective shares of such two-thirds; and that will close the business, except only that part of it which relates to the mort-

gages, which, as before mentioned, you will adjust between yourselves; and as to them, as they do not form a part of the arrangement with Mr. B., I shall not consider it necessary to withhold the interchange of the other papers until they are completed, unless on transmitting me the paper for Mr. B., you should apprise me that they are so considered by you, in which case, I will retain them until otherwise instructed by you.

Yours, truly,

P. W. RADCLIFF.

MATHEW S'T CLAIR CLARKE, Esq.

NEW YORK, *June* 28, 1830.

DEAR SIR: After the letter which I addressed to you, a few days ago, by General Duncan, little more, if anything, is now necessary than to forward to you for execution the inclosed release, &c., to be executed to Mr. Boorman. I have drawn it with as many recitals as seemed to be necessary to explain the outline of the arrangements to which it relates, and, (I think,) no more. It is necessarily long—more time and better opportunity might have enabled me to condense it a little more, but probably not much. The operative part of it is concise and pithy—containing everything that Mr. B. could wish, and not more, I think, than you intended it should.

567 You will draw, as mentioned in my last, whatever may be necessary or proper as between yourself and the other members of the family. I have, as you perceive, omitted to say anything about your own arrangements—treating the conveyance to Mr. Dyson as an absolute sale, and which, upon reflection, I am satisfied is the true ground on which to leave it, as far as Mr. B. and yourself are concerned.

If I cannot obtain the engrossed copy from the scrivener in time for to-morrow's mail, which may possibly be the case, I shall still forward this—that you may know the other is on the way. It will in that case follow by the next preceding mail.

Yours truly,

P. W. RADCLIFF.

M'W ST. CLAIR CLARKE, Esq.

BROOKLYN, *Tuesday evening, June* 29, 1830.

DEAR SIR: The inclosed instrument could not be engrossed in time for this day's mail, and my letter of last evening was therefore dispatched without it. I hope it will come to hand in time to prevent any inconvenience or delay to General Duncan.

You will perceive that I have not only omitted the provision relating to the mortgages between yourselves, (as mentioned and explained in my letter of the 24th instant,) but on the General's suggestion, which appeared to me to be judicious, and to which Mr. Boorman readily assented, the clause is also omitted which was proposed to provide for the case of the limitation ever taking effect in regard to any of the $\frac{3}{4}$d shares, and for new releases then to be executed by the persons upon whom the right so limited should devolve. It might lead to a good deal of inconvenience, and Mr. B. is entirely content to rely upon the covenant for indemnity as I have prepared it. The only additional suggestion I have to make is, that, as the instrument looks to a distant day when (if ever) it is to be resorted to, you will have it executed in the

568 presence of one or two witnesses, of fixed residence, and whose signatures will be known when the parties who now execute will be no longer here to acknowledge them.

P. W. RADCLIFF.

M'W ST. CLAIR CLARKE, Esq.

DEAR GENERAL: I now inclose you the famous paper of Mr. Radcliff, and with it, one to be signed for me, as the plan proposed by you and Mr. R. left me completely unprotected; the first plan having embraced a release to me as well as Mr. Boorman. On reading the paper, you will see the justice of this; and it is sufficiently guarded as to hold me responsible for all matters not accounted for at the settlement. Both of these bonds require your signature only; and the only precaution Mr. R. enjoined on me was to have our signatures witnessed by persons of known character, as they are not to go on record. Your brother James will do; because, if they think not, they can send on next winter here, and get another witness. Your other deeds I sent off. Send me a power of attorney from yourself and wife for Asa Hascall, of Malone, to act as agent for you. I hope you are all home safe. The whole of this month has only varied from 86 to 94 degrees of heat. I am really sweating into your Calvin Edson shape. Jeanet and Anna Maria started off yesterday with Mr. Slade for Greencastle, and anywhere else.

We are all well, and if they were here, would send love to you all.

Yours, truly,

M'W ST. CLAIR CLARKE.

WASHINGTON, 23*d July*, 1830.

I forgot to get you and wife to sign the deed for James. Do so, and have the acknowledgment written, as that is for me and my wife; and get one of the judges of your superior court—U. S. court; or if at St. Louis, Judge Peck.

569 BROOKLYN, *Nov. 26th*, 1833.

DEAR SIR: I hand you herewith four deeds, executed by you and the other parties in interest, on the division of the real estate of Mr. Smith, viz, one from the executors and heirs and devisees of Robert Dyson, and three from him to yourself and Mrs. Duncan, Mrs. Jeanet Clarke, and Mrs. Mathew Clark, respectively, all which have been recorded here.

The others that were executed on that occasion have all been returned. Why these were left with me I do not now recollect; but the object is no doubt accomplished, and they are more properly in the hands of the parties themselves than in mine. Be so good as to distribute them, on your arrival at Washington, as may be right. I regret, as I shall not be able to go to town to-morrow, that I shall not have the pleasure of seeing you again before your return to Washington.

Wishing you a prosperous journey, I am, very resp'y, yours,

P. W. RADCLIFF.

Gen'l JOSEPH DUNCAN.

DEAR ROBERT: I have but arrived at home; my office has been enlarged, and my papers put out of place, so that I cannot find my map; I have, however, compared your list with my land-ledger, and find your letter correct as to the numbers. The streets I cannot designate without my map—but rather than wait, I give you the following enumeration. You mentioned in your letter that you had reserved the small

point on 17th for Jeanet. This constitutes No. one. No. 38 belonging to me, is not enumerated—was this part of what I sold to Hamilton, which you mention as also reserved? I presume so. Lot No. 39, which we bought from James, is the one sold to you; with these exceptions, all the property passes under the $60,000.

My first deed, as trustee of Jeanet, will include the following lots: No. 2, 3, 4, 7, 11, 14, 15, 18, 25, 31, 34, 50, 51, 56, 57, 70, 71, 74, 81, 82, 95, 96, 101, 102, whole and fractional. From self and wife: No. 6,
570 12, 16, 17, 20, 26, 29, 32, 36, 38, 43, 44, 45, 46, 48, 49, 50, 62, 63, 66, 67, 80, 85, 86, 89, 103, 104, 105. Since writing the above, I have taken one of James's lithograph maps, and put down the numbers and subdivisions. You are right as to the streets also. I had erased lot No. 50 from Jeanet's list, but it may be left in, and also in mine—for this reason: This lot, with one on Allen and one on Eldridge, was conveyed to me by Jeanet, to repay me the sum of $2,346.73, moneys advanced to her—by deed 13 July, 1830, recorded in liber 266, page 329. You were directed to fill up the blank in the deed for the number of the lot, and whether you did so before it was recorded, I know not, as I cannot now turn to it. So that to prevent mistakes, it may be in both deeds.

There were mortgages executed by Jeanet, and self and wife, to the heirs of some of those lots.

I inclose the satisfaction of those mortgages, executed according to the forms of your laws. You had better hand them over to Mr. Radcliff.

Lots No' 62 and 90 were first conveyed to you by the executors and heirs, because I could not join as executor in a conveyance to myself—and by you to self and wife on same day—being in part of our share as heirs of Mrs. Smith, late Mrs. Rodgers, and which we took absolutely. The deeds are recorded in liber 230, pages 400 and 403.

The other lots were conveyed in the general deed from executors and heirs to you, and from you to self, and wife, which are duly recorded.

The executors and heirs conveyed to Jeanet, and she, by deed of trust, to me. Mr. Radcliff has all the references, I presume. Have you got my deeds? I sent several, including Jeanet's, to Asa Hascall, at Malone, in 1832, with directions to return them to you when they were recorded there, and since then I have not seen them. Do not forget to answer this in your next.

What portion of the $6,000 will the insurance company require on sale of those lots? The division of the purchase-money cannot be equal between Jeanet and myself—mine cost more by about $800—and lot No. 50 was hers, but is mine. I sold or reserved from this sale No. 38. Of this, however, hereafter.

571 This is a longer letter than I usually write. My love to all the family. We are all well.

Yours, truly,

M'W ST. CLAIR CLARKE.

26 NOV., 1834, WASHINGTON.

NEW YORK, 23*d March*, 1835.

MY DEAR SIR: Your two letters touching the property were read with effect to Leroy and counsel, and last week I intimated to them that unless they came forward by to-day and take the property, I should have my name substituted in the deeds, and become the purchaser myself, with all the disabilities. Just now they called and stated that they believed they would take the property; but if any further

difficulty should turn up, you may depend upon my executing the threat, in which case you may retain the right of redeeming. I have been induced to take the stand spoken of more with a view to carry into operation your plan than from any idea of making anything by it; but I presume Leroy will take, seeing my confidence in the title, and as a matter of speculation. Gov. Duncan has sent me the acts for bank, canal, and railroad. The bank has features in it which will prevent any man out of the State from touching it, and the section holding the stock for liabilities to the bank on the part of the stockholder is the most embarrassing part of it. Such a charter never can obtain the confidence of men who have money to lose. Again, the canal, &c., can only give the land as security to the subscribers to the stock, and the sum as set forth in the acts is just enough to prepare the way only of doing the work. I could modify the whole in such a way as would conduce to the interests of the owners of the stock, and be acceptable to the legislature. But depend upon it, that no man will lend money here on the security the act gives. If the State had agreed to issue bonds there would have been an immense saving, and the stock might have gone to 20 per c't premium at once. I could make a fortune
572 out of these concerns if the legislature would follow the example of Ohio in like affairs; and until she does, the whole thing must remain statu quo.

All well.

Ever yours,

R. DYSON.

NEW YORK, *May* 31, 1859.

CHARLES E. PUTNAM, Esq.:

DEAR SIR: I am in receipt of your favor of the 28th instant, relative to the estate of James R. Smith, deceased, of whose will I was an executor, and am pleased to give such information as may be in my power as to the settlement of the estate, which is, however, little beyond that contained in the affidavit made by me some two or three years since, in a suit pending in our superior court, between Conover and Hoffman, of which I have furnished you a copy. The original will and codicil are not in my possession, nor do I know where they are; and I am not aware that I have any papers which will throw more light upon the settlement of Mr. Smith's estate, than the recitals contained in the deeds executed by the surviving executors and the heirs, which are recorded in the register's office. By these deeds parts of the real estate were conveyed to the respective heirs in satisfaction of a debt due from their father's estate to their mother's estate, of which the same parties were heirs; the share of James C. R. Smith in his father's estate was conveyed to him, and one-third of each daughter's share was conveyed to the daughters respectively, leaving two-thirds of the daughters' shares—which two-thirds included the whole remaining estate, and were conveyed by the executors and daughters and sons-in-law to Robert Dyson, by deed dated Dec. 26, 1829, rec. Dec. 20, 1830, lib. 207, conv's, page 344. This last deed terminated my connection with the estate. No part of the consideration of $64,710.59, expressed in this deed, was received by me. Such consideration is therein acknowledged by Mr. Clarke, the other executor, to have been received by him. Such considera-
573 tion, was the valuation of the said two-thirds, and the intent of this deed was to close the estate and to relieve me from the remote responsibility in the matter, in case the remainder over as to these two-thirds in any case took effect.

As you are aware, the records show that simultaneously with this conveyance to him, Mr. Dyson reconveyed the same property in separate portions, and by these deeds, to the daughters and their husbands and the heirs of the daughters, and the aggregate consideration expressed in these three deeds is of the same amount as the consideration in the deed to Mr. Dyson; and about the same time, the heirs executed mortgages to each other which recited the provisions of Mr. Smith's will as to the two-thirds of the daughters' shares, and that such two-thirds had become vested in the daughters absolutely, and declared that such mortgages were intended to operate as a security for the faithful fulfillment of the provisions contained in said recited portions of said will.

Now whether or not Mr. Dyson actually paid to Mr. Clarke the consideration above mentioned, and received it back again from the daughters, or whether any money at all was paid or received, is a matter of which I have no knowledge, excepting from the deeds themselves, and the conclusions which any person might draw from the papers.

In all my connection with the estate, I was guided by my brother-in-law, Peter W. Radcliff, esq., counselor-at-law, the agent of said estate, in whom I had unlimited confidence; and from my knowledge of his character, and of my own purposes, I say that there was no intent to avoid or evade the trust, and I supposed and believed that Mr. Clarke, by receiving the consideration money of the deed to Dyson, with the consent, and by the desire of all parties interested, became the sole trustee, and the consideration became the trust fund.

As to what took place between the parties subsequently, in the arrangement of said trust fund, whether the parties intended that the separate estate of each daughter should be invested by her husband, in trust for her separate use and benefit, in compliance with the trusts created in the will, is a matter in which I was in no way a party, but
574 such, according to the best of my recollection at this distant period, was my decided impression, and is my full belief. And in regard to Mrs. Duncan's share, this is confirmed by the repeated declaration of Gov. Duncan to me, that he had so invested the proceeds of Mrs. Duncan's trust property in lands in Illinois.

Yours, very respectfully,

JAMES BOORMAN.

575 (Indorsed:) U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 24. Knox & Mason, sol'rs for def'ts. Filed Sept. 12, 1871.

576 This indenture, made this thirteenth day of July, one thousand eight hundred and thirty, between Jeanet Clarke, of the city of Washington, late of Greencastle, Pennsylvania, of the one and first part, and Mathew St. Clair Clarke, of said city, of the second part: Whereas, on settlement of the estate of the late James R. Smith, the said Jeanet became indebted to the said Mathew for monies advanced to her by him, in the sum of two thousand two hundred and forty-one dollars and six cents, with interest from the day of settlement, to wit, the first day of October, one thousand eight hundred and twenty-nine; and whereas, on the twenty-ninth day of June, one thousand eight hundred and twenty-four, the said Jeanet, in conjunction with her then husband, John X. Clarke, now deceased, did authorize the said Mathew, by their sealed instrument in writing, to retain in his hands as executor of James R. Smith, deceased, so much money as would satisfy himself for all monies which the said Mathew might pay for them and on their

account; and whereas, said Mathew was at said settlement in advance to her, the said Jeanet, the aforesaid sum, and had not monies of said Jeanet in his hands to pay the same; and whereas, said Jeanet did then agree to pay the said sum to the said Mathew, by conveying to him in fee-simple part of her real estate in the said city, at the same valuation as was put thereon at the settlement or distribution of the real estate of the said James R. Smith among the heirs; and whereas by deed dated the thirteenth day of May last, and this day delivered to said Mathew, he was therein authorized to pay himself the aforesaid sum, with the interest, out of the real estate of said Jeanet; and whereas the said Mathew hath elected so to do; and whereas the said sum and interest at 6 per cent. amounts to two thousand three hundred and forty-six dollars and seventy-three cents: Now, therefore, the said Jeanet, antecedent to the delivery of said above-named deed for the consideration last named, as well as the further sum of three dollars and twenty-seven cents in hand paid before the delivery hereof, making together two thousand three hundred and fifty dollars, the receipt whereof the said Jeanet doth hereby acknowledge from the said Mathew, hath granted, bargained, and sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, and sell, alien, remise, release, convey, and confirm unto the said Mathew, his heirs and assigns, all those certain lots, pieces or parcels of ground, situate in the city of New York, known and described as follows, to wit: One lot on Allen street, known as lot No. 826 in the plan of said city, adjoining a lot of said Mathew and wife on the south, being twenty-five feet front and rear, and running for depth towards Eldridge street to the middle of the square, being one hundred feet more or less. Also, one lot on Eldridge street, known as lot No. 6 in the subdivision of James R. Smith's estate, and on the plan of said city as lot No. 655, lying adjoining a lot of said Mathew, known as lot No. 656, being twenty-five feet in front and rear, and running for depth towards Forsyth street to the middle of the square, being one hundred feet more or less. Also one lot, known as lot No. in the subdivision of the great lot, called the John Kerr lot, lying on Eighteenth street, between the Fifth and Sixth avenues, being twenty-five feet front, and running back about ninety-two feet: To have and to hold the said lots or parcels of ground, with their hereditaments and appurtenances, and all the interest, right, and title of her, the said Jeanet, to him, the said Mathew, his heirs and assigns, forever, to his and their only use, benefit, and behoof, forever.

In testimony whereof, the said Jeanet Clarke hath hereto set her hand and affixed her seal the day and year first above written.

JEANET CLARKE. [L. S.]

Signed, sealed and delivered in the presence of—
NOAH FLETCHER,
W. CRANCH.

WASHINGTON COUNTY,
District of Columbia, ss:

Be it remembered that on this twenty-first day of July, anno Domini one thousand eight hundred and thirty, before me, William Cranch, chief judge of the circuit court of the United States for said District, personally came Jeanet Clarke, to me known as party grantor in the aforegoing deed, and did acknowledge the same to be her act and deed for the purposes therein mentioned.

W. CRANCH.

Recorded the preceding at the request of Rob't Dyson, this 2d of October, 1830, at 23 min. past 11 a. m.

JAMESON COX, *Register.*

577 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 2d day of October, A. D. 1830, at 11 o'clock 23 min. a. m., in liber 266 of conveyances, page 329, and certify the same to be a correct transcript therefrom, and the whole of said instrument. I further certify that there is no official seal belonging to this office.

JOHN KEYSER, *Register.*

Dated this 29th day of April, 1863.

578 (Indorsed:) Jeanet Clarke to M. St. Clair Clarke. Dated July 13, 1830. U. S. circuit court. Clarke vs. Executors of Boorman. Exhibit No. 25. Knox & Mason, sol'rs for def'ts. Deed. Filed Sept. 12, 1871. Hall, Clayton & Medole, printers, 46 Pine street, N. Y.

579 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the third day of December, in the year of our Lord one thousand eight hundred and seventy;

Present, the Honorable Samuel Blatchford, dist. judge.

GEORGE D. CLARK ET AL.
vs.
JAMES B. JOHNSTON & ADAM NORRIE, EXECUTORS of James Boorman, deceased.

This cause coming on to be heard upon pleadings and proofs.
Mr. Louis Janin is heard on part of complainants.
Mr. Charles O'Connor is heard on part of defendants.
Mr. Louis Janin is heard in reply.
C. A. V.

580 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 16th day of , in the year of our Lord one thousand eight hundred and seventy-one.

Present, the Honorable Samuel Blatchford, district judge.

GEORGE AUGUSTUS CLARKE AND JEANET VIRGINIA CLARKE, by Reuben Middleton, their guardian & next friend,
vs.
JAMES B. JOHNSTON AND ADAM NORRIE, EXECUTORS of the last will and testament of James Boorman, deceased.

This cause coming on to be heard on the pleadings and proofs, and having been argued by Mr. Louis Janin, of counsel for the complainants, and Mr. Charles O'Connor, of counsel for the defendants, and the court

having duly considered the same, it is ordered, adjudged, and decreed, and this court, by virtue of the authority in it vested, doth order, adjudge, and decree, that the complainants' bill of complaint be, and the same hereby is, dismissed. And it is further ordered that the complainants pay to the said defendants their costs in this suit to be taxed, and the said defendants have execution out of this against the said plaintiffs for the same.

(Signed) SAM'L BLATCHFORD.

581 (Endorsed:) Circuit court of the U. S., southern district of New York. In equity. George Augustus Clarke & Jeanet Virginia Clarke vs. James B. Johnston and Adam Norrie, executors of James Boorman, deceased. Decree. Knox & Mason, sol'rs for def'ts.

Due notice of settlement on October 16, 1871, at 10½ a. m., is hereby admitted.

GOEPP & STERNE,
Pl'ff's Att'ys.

Filed October 16, 1871.

582 Circuit court of the United States for the southern district of New York, sitting in equity.

G. A. CLARK ET AL., APPELLANTS,
vs.
JAMES B. JOHNSTON & ADAM NORRIE, EXECUTORS of James Boorman, appellees.

To the honorable the Supreme Court of the United States.

The appeal of G. A. Clarke and J. V. Clarke, the above-named appellants, respectfully showeth that, on the 26th day of April, A. D. 1869, the above-named G. A. Clarke and J. V. Clarke filed their bill of complaint in the circuit court of the United States for the southern district of New York, against the above-named James B. Johnston and Adam Norrie, in a suit in equity, calling upon them to pay to them, the said G. A. Clarke and J. V. Clarke, the just and present value of the real estate accruing to them under the will of their great-grandfather James R. Smith; that the said defendants James B. Johnston & Adam Norrie filed their answer to the said bill of complaint, and these appellants replied thereto. Whereupon such proceedings were had
583 in this said cause, that, on the 16th day of October, 1871, a final decree was entered in said circuit court, wherein it was decreed that the said bill of complaint be dismissed with costs, which said judgment and decree are, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of said circuit court and the bill of complaint, answer, replication, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the circuit court and every part thereof may be reversed, or such other decree made as to the said Supreme Court shall seem just.

Dated New York, November thirteenth, 1871.

G. A. CLARKE & J. V. CLARKE.
By their attorneys, GOEPP & STERNE.

(Endorsed:) United States circuit court, southern district of New York. In equity. G. A. Clarke & J. V. Clarke, appellants, vs. James B. Johnston & Adam Norrie, executors of James Boorman, appellees. Appeal to the Supreme Court. Goepp & Sterne, sol'rs for appellants. Filed Nov. 13, 1871.

584 Circuit court of the United States for the southern district of New York, sitting in equity.

G. A. CLARKE & J. V. CLARKE
vs.
JAMES B. JOHNSTON & ADAM NORRIE, EXECUTORS of James Boorman.

Know all men by these presents that we, G. A. Clarke & J. V. Clarke, and Edward P. Cowles & Hector B. Meredith, of the city and county and State of New York, are firmly bound unto James B. Johnston and Adam Norrie in the sum of five hundred dollars, to be paid to the said James B. Johnston & Adam Norrie, their executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, and assigns, jointly and severally by these presents, sealed with our seals, and dated the 13th day of November, A. D. 1871.

Whereas the above-named G. A. Clarke & J. V. Clarke, complainants in the above-entitled cause, have prosecuted an appeal to the Supreme Court of the United States out of this court, to reverse the decree rendered in the above-entitled cause, and entered with the clerk of this court on the 16th day of October, A. D. 1871, by which decree it was adjudged that the bill of complaint of the said G. A. Clark and J. V. Clarke be dismissed with costs.

Now, therefore, the condition of this obligation is such that if
585 the above-named G. A. Clarke and J. V. Clarke, complainants as aforesaid, shall prosecute the said appeal to effect, and shall pay all damages and costs if the said decree shall be affirmed, then this obligation to be void; otherwise to remain in full force and virtue.

G. A. CLARKE & J. V. CLARKE.
By their attorney, J. W. DENVER. [L. S.]
EDWARD P. COWLES. [L. S.]
HECTOR B. MEREDITH. [L. S.]

Sealed and delivered and taken and acknowledged this 13th day of November, A. D. 1871, before me.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edward P. Cowles being duly sworn, deposes and says that he is a freeholder, residing in the city and county of Westchester, State of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

E. P. COWLES.

Sworn to before me this 13th day of November, 1871.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

586 Hector B. Meredith, being duly sworn, deposes and says that he is a freeholder, residing in the city, county, and State of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HECTOR B. MEREDITH.

Sworn to before me this *this* 13th day of November, 1871.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

I approve of the sufficiency of the sureties to the within bond.
Nov. 13, 1871.

SAM'L BLATCHFORD.

(Endorsed:) United States circuit court, southern district of New York. In equity. G. A. Clarke and J. V. Clarke, appellants, vs. James B. Johnston & Adam Norrie, executors of James Boorman, appellees. Bond on appeal. Goepp & Sterne, sol'rs for appellants. Filed Nov. 13, 1871.

587 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to James B. Johnston and Adam Norrie, executors of James Boorman, appellees:

Whereas G. A. Clarke and J. V. Clarke lately appealed to the Supreme Court of the United States, from a decree rendered in the circuit court of the United States for the second circuit and southern district of New York, made in favor of you, in a suit brought by the said G. A. Clarke & J. V. Clarke against you, the said James B. Johnston and Adam Norrie, and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the second circuit, this 13th day of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

SAM'L BLATCHFORD.

588 (Endorsed:) Supreme Court of the United States. G. A. Clarke & J. V. Clarke, appellants, vs. James B. Johnston & Adam Norrie, executors of James Boorman, appellees. Citation on appeal. Goepp & Sterne, sol'rs for appellants.

Due and timely service of the within citation admitted.
November 12, 1871.

KNOX & MASON,
Sol'rs for Appellees.

Filed November 13, 1871.

(Indorsement on cover:) No. 377. George A. & J. V. Clarke, appellants, vs. James B. Johnston and Adam Norrie, ex'ors of James Boorman. S. New York C. C. U. S. Filed 8th April, 1872.